

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION

4 **CONFIDENTIAL PORTIONS INCLUDED**

5 IN RE:

6 GARLOCK SEALING TECHNOLOGIES, No. 10-BK-31607
7 LLC, et al,
8 Debtors.

9 VOLUME XII
10 TUESDAY, AUGUST 6, 2013
11 FULL DAY

12 TRANSCRIPT OF ESTIMATION TRIAL
13 BEFORE THE HONORABLE GEORGE R. HODGES,
14 UNITED STATES BANKRUPTCY JUDGE

15 **CONFIDENTIAL PORTIONS INCLUDED**

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E X H I B I T S

Debtors' Exhibits No.: ADMITTED

ACC's Exhibits No: ADMITTED

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P R O C E E D I N G S

(On the record at 9:31 a.m.)

THE COURT: Have a seat. Good morning. Before we get started, let's double check where we are. By my count, we are launching into Garlock's rebuttal time today. You-all have -- the ACC and FCR have four days remaining, is that correct, in the time we laid out? And this will be one of those days, I guess.

MR. SWETT: This will certainly be one of those days, Your Honor. We're actually -- we're on cross of Garlock's witness. So under the way that you originally were counting the time, we're on Garlock's clock now. It is evident that both sides are going to have to make significant tradeoffs in order to bring the case in within the originally allotted period. We are fully prepared to do that.

We had used several days for the ACC's science case. What remains as far as our affirmative evidence is concerned are a couple of fact witnesses and several experts. Mr. Cassada has an issue he would like to raise this morning with regard to one of our proposed fact witnesses, Mr. McClain. We also have Mr. Rice on tap. Those are our fact witnesses. As for experts, we have Mr. Patton. We have Mr. McGraw, although Mr. Cassada and I are in discussions about ways in which we might obviate

1 for each of us the financial experts taking the stand.
2 We have Dr. Peterson and, I believe, that's it. We have
3 Mr. Hanly, who is -- who will testify today.

4 So, we -- the way we see it, we are shifting this
5 morning after -- this afternoon, after Mr. Magee's
6 cross-examination and redirect, to the affirmative case
7 of the ACC and the FCR. The FCR, of course, has
8 Dr. Rabinowitz, who will be the last witness on this side
9 of the aisle's overall presentation.

10 THE COURT: Okay.

11 MR. CASSADA: Thank you, Your Honor. By our
12 count, Your Honor, we have -- if one were keeping track
13 of time, we have had substantially less time and will, by
14 the end of Mr. Magee's testimony, have had substantially
15 less time than the Committee has used. That's when
16 you're counting their cross-examinations and weighing
17 those against our direct examinations.

18 It does appear that we are not going to be able to
19 call a lot of witnesses who we view as essential to our
20 case. And we have some rebuttal witnesses, and we're
21 concerned about whether we're going to be -- have the
22 time to call the rebuttal witnesses that we'll need to
23 call. But in any event, if one were keeping measure
24 under the CMO that was in place, we would be
25 substantially behind the Committee and FCR's combined

1 time, which -- and under that Order would have counted
2 cross-examinations against the party taking the cross.
3 So we'll hope at the end of the day that the Court will
4 take that into account and fairly allocate time and offer
5 Garlock an opportunity to put on its evidence.

6 THE COURT: Well, we're going to have to quit
7 Monday afternoon. And as far as I can tell, I don't
8 think anybody's going to be hurt by the volume of
9 evidence. That appears to be ample to flesh out each of
10 your-all's positions and to give ample basis on which to
11 make a decision. With less information than this,
12 Dorothy found Oz, and I'll try to do the same thing with
13 what I've got to do.

14 We will have to quit on Monday. I'll let you-all
15 allocate that the best you can. I suggest, just as a
16 minor tweak, that we start at 9 o'clock on Thursday and
17 Friday of this week, because we'll have to clear out of
18 here on Friday and give this back to the district court,
19 and I gather that will take a little while for you-all.
20 I mean, don't you-all have a lot of stuff you need --

21 MR. CASSADA: Yeah. We'll have to plan ahead on
22 all the logistics and make sure that we're able to
23 decamp.

24 THE COURT: Why don't we start at 9 o'clock on
25 Thursday and Friday and then knock off at 4:30 on Friday

1 to give you time to clear out?

2 MR. CASSADA: Okay.

3 THE COURT: Okay?

4 MR. CASSADA: Your Honor, I did want to raise one
5 matter about a witness that the Committee had given
6 notice after the -- right at the start of trial they were
7 going to call a David McClain. We did have an
8 opportunity to take his deposition yesterday and, as a
9 result of that, we'd like to renew our motion to exclude
10 him from testifying. We did learn yesterday that he had
11 been requested to serve as a witness over two months
12 before the beginning of trial.

13 It's not clear exactly to him, I think, why he's
14 coming or what he's going to testify about. It appears
15 that he may be offered as rebuttal for a witness,
16 Mr. Glaspy, who we're unlikely to have an opportunity to
17 offer. We also -- based on the progress of the trial, we
18 were required to use a lawyer, Mr. Sanders, who's not --
19 who hasn't been intimately involved in preparation for
20 our case. So he's not the lawyer who would have taken
21 that deposition if we'd had a chance to take it during
22 the normal course of discovery.

23 We're concerned about a couple of other things,
24 too. One, that he might be offering opinion to rebut
25 opinions that we had given notice of and reports filed

1 back in mid-February of this year, opinions by
2 Mr. Turlik and Mr. Glaspy. There has been no expert
3 report offered by him. We don't know exactly what his
4 opinions would be. We suspect he's going to express
5 opinions about the course of the litigation and offer
6 other kinds of opinions that would rebut our opinion
7 testimony. So we're concerned about that.

8 We're concerned that he may discuss specific
9 cases. And as Your Honor knows, we've taken discovery on
10 cases that the Committee has highlighted as being
11 significant and either proving their theory or disproving
12 ours. We've not had a chance to take discovery on those
13 specific cases. So we think that he appears to be sort
14 of a hit-and-run witness.

15 So we renew our motion based on late notice,
16 failure to file an expert report, and prejudice to
17 exclude him. If he is to testify, we would ask Your
18 Honor to continue his cross until later this week and to
19 require him to produce any documents related to any
20 specific case that he may discuss. Specifically, that he
21 produce trust claims and other claims filed on behalf of
22 any clients in those cases asserting or -- asserting a
23 claim against a bankrupt company or representing them in
24 a bankrupt -- against a bankrupt company. So in any
25 event, we wanted to raise that issue before the Court and

1 make sure that Garlock had a fair opportunity to address
2 whatever evidence the Committee offers through
3 Mr. McClain.

4 MR. SWETT: Your Honor, in order to understand
5 this, you have to go back to the beginning of the written
6 discovery. Neither side has served an interrogatory
7 saying identify all persons with knowledge of the subject
8 matter. Instead, they've said tell me who your witnesses
9 are going to be that applies to your case in chief. You
10 can't say who's going to rebut until you hear what is to
11 be rebutted.

12 Mr. McClain is a fact witness, not an expert. We
13 questioned whether Mr. Turlik and Mr. Glaspy are bona
14 fide experts in their role in this case. They are,
15 instead, historical defense attorneys for many years
16 standing with Garlock, and they've purported to have
17 styled themselves as experts where the foundation of
18 their work -- of their opinions is that their long
19 history working as defense attorneys for Garlock, which
20 foundation was sealed for us in -- against us in the fact
21 discovery phase by invocations of privilege.

22 There has been no tilting of the table or
23 unilateral disadvantage imposed on Garlock when it comes
24 to lawyers. Now, Mr. McClain didn't render a report
25 because we don't conceive of him as an expert. We think

1 it is appropriate rebuttal to the story that you heard
2 from each and every one of the Garlock witnesses, their
3 characterizations of what goes on in the tort system, to
4 hear from a person who is immersed in the plaintiff's
5 side of the tort suits to this very day and who can
6 recount, as a matter of fact, how the cases are built,
7 what the issues are, how they are presented to juries,
8 and how they come out.

9 He can also put a fair light on the very
10 selective, highly colored presentation that Garlock has
11 made of cherry-picked snippets and instances in given
12 cases, not by speaking to those very cases but by giving
13 you a fair, more complete picture of what it's like to be
14 on the plaintiff's side of these cases building a case to
15 an expedited trial for a dying mesothelioma victim.
16 That's the kind of thing you'll learn from Mr. McClain.
17 I will respond directly to the tendentious and
18 argumentative supposed fact presentation by Garlock.

19 So it is fair rebuttal. Now, it's not -- it's no
20 surprise that a lawyer like this would be in a position
21 to testify to issues like that. Mr. McClain is a partner
22 in the Kazan law firm in Oakland, California. Mr. Kazan
23 himself is our co-chair. Mr. Cassada has been well aware
24 of the involvement of that law firm in the case. With
25 regard to the notion that notice should have been given

1 in the written discovery phase, I wrote to Mr. Cassada
2 well in advance of the trial to tell him that as I
3 understood the pretrial order, it was not necessary to
4 try to anticipate who might be called in rebuttal.

5 Mr. McClain, by the way, is not the only person
6 who I reached out to in May in search of who might be in
7 a position to rebut if rebuttal were called for. He
8 happens to be the person I selected as best able to speak
9 to the issues that Garlock seemed to be raising. But I
10 wrote to Mr. Cassada and said look, in my experience,
11 rebuttal witnesses are not identified until they come to
12 rebut. Do you disagree? We had a phone conversation.
13 He said yes, I disagree. We put it down for a status
14 conference with Your Honor.

15 You may remember we went through a letter I had
16 written him. That's the letter I'm talking about. He
17 raised which issues I had flagged in the letter he wanted
18 resolved at that conference. He did not raise this issue
19 of the identification of rebuttal witnesses. And by the
20 way, even the final witness list, even the final order --
21 I'm sorry, the final witness list given under the
22 pretrial order just weeks before the trial, both Garlock
23 and Coltec put on their list anyone needed for rebuttal
24 without naming, and the Committee did the same.

25 So this is, you know, this is goose and gander

1 stuff, Judge. This is the way the parties have
2 proceeded, and the claim of surprise is contrived.

3 Now, as far as discovery is concerned. He's not
4 going to be giving, you know, the details of any
5 particular case against Garlock. He is proceeding on the
6 same basis that all of the lawyers who have been deposed
7 in this case on both sides have proceeded when they are
8 in the role of fact witnesses. You have held that
9 general testimony going to the workings of the tort
10 system will not be deemed a waiver in this case. So he
11 -- and he is not waiving. So he does not intend to go
12 beyond that general level in speaking to these issues,
13 just as in the fact discovery phase Mr. Turlik did not
14 waive and Mr. Glaspy did not waive.

15 So Garlock need not fear that we're going to drill
16 down into some, you know, hard-fought Garlock case with
17 them in order to do what they've done by way of picking
18 out snippets and trying to color your view unfairly of a
19 complex, detailed, fully developed case in the tort
20 system by this inadequate substitute of putting little
21 pictures up on the board.

22 Instead, you're going to get a fair exposition
23 from the plaintiff's side of the way in which these cases
24 unfold, shaped to respond to the factual contentions that
25 Garlock has made, and there's nothing unfair about it or

1 anything that calls for more than the deposition that
2 they took yesterday.

3 With regard to this notion that they had to put up
4 a tyro to depose him. Blaine Sanders took depositions in
5 the estimation case. He took Michael Shepherd's
6 deposition. He also was the person principally charged
7 with taking depositions in the Williams Kherkher
8 adversary proceeding. So he knows these issues. He
9 drilled way down into the Phillips case. He presented
10 that case to Your Honor in the motions practice that we
11 had. They were at no disadvantage in sending Mr. Sanders
12 in to take that deposition.

13 Furthermore, Mr. McClain was completely
14 forthcoming, concerned that they not be left with any
15 argument of substantial prejudice. Ordinarily, when the
16 witness comes to the table if you ask him, what are you
17 going to testify at the trial? The answer to that is,
18 that's work product. Ask me your questions, then I'll
19 answer it factually, but I'm not going to tell you my
20 work product. That's not what happened here.

21 Mr. McClain was completely forthcoming and said
22 everything he could to give fair notice to these people
23 of what the subject matters of his testimony were to be.
24 And I think that if you permit him to take the stand and
25 that testimony comes out, you will see that they are, you

1 know, in a fine position to cross-examine him.

2 Thank you, Judge.

3 THE COURT: I will allow Mr. McClain to testify as
4 a fact witness, and we'll proceed from there.

5 MR. CASSADA: Your Honor, can we be permitted to
6 cross-examine him later this week after we've had a
7 chance to see his testimony?

8 THE COURT: I think we ought to go ahead and do
9 that.

10 MR. SWETT: That's a big problem, Judge. He's
11 from California.

12 THE COURT: I understand. We'll do the
13 cross-examination after his direct examination.

14 MR. CASSADA: Okay. We'll take exception with
15 that. Thank you, Your Honor.

16 THE COURT: I understand.

17 MR. GUY: Your Honor, I have something
18 noncontroversial. I just wanted to hand up to the Court
19 and get admitted, first, a demonstrative that we used,
20 FCR-35 and FCR-36. We've already circulated these to the
21 parties, and I've handed them up.

22 THE COURT: All right.

23 MR. GUY: Also, exhibits for substantive
24 purposes: FCR 37, FCR 38 and 39. That's all of them.
25 Thank you, Your Honor.

Cross - Magee

1 THE COURT: All right. Thank you.

2 Okay. So we will proceed with the witness,
3 Mr. Magee.

4 MR. SWETT: Your Honor, with your permission I'm
5 going to be moving back and forth between the podium and
6 the table. And we have some matters that we can cover
7 without closing the courtroom but, in fairly short order,
8 given the nature of Mr. Magee's direct testimony, it's
9 going to be necessary to get into specific cases and I'll
10 ask at that time that the courtroom be cleared.

11 THE COURT: All right.

12 **CROSS-EXAMINATION**

13 BY MR. SWETT:

14 Q. Good morning, Mr. Magee.

15 A. Good Morning, Mr. Swett.

16 Q. I'd like to begin by taking a look back at the
17 1990s at a fairly high level through some data and
18 information. This, of course, was a year when, according
19 to the testimony, Garlock was not subjected to
20 disadvantages that later came under -- in the litigation
21 of the 2000s. So I'd like to revisit that earlier era
22 with a couple of slides. Mr. Walker, could you show
23 ACC-745, please?

24 This is just to remind us of the extent of the
25 dollars spent by Garlock in defense of asbestos cases for

Cross - Magee

1 indemnity payments to victims all the way up to 1999.

2 And as you see there, in the dollars of the day, meaning
3 not inflation adjusted, through 1999 Garlock spent \$335
4 million-plus. And if you translate that into inflation
5 adjusted dollars at the petition date, that comes up to
6 just under \$485 million. Do you see that, sir?

7 A. Yes, sir. But could I ask you a couple of
8 questions about it?

9 Q. I'm not sure I'll be able to answer them, but go
10 ahead.

11 A. The heading says 2010 dollars. So is that 2010
12 dollars or dollars of the day?

13 Q. Dollars of the day is in the right-hand column,
14 sir, and it produces a lower number

15 A. Okay. I got that. I understand. Thank you.

16 Q. Now, one thing that you'll observe is the sharp
17 increase in the payments in 1999. Do you see that? They
18 go from \$33.9 million in the dollars of the day to \$70.5
19 million in a single year. Do you see that?

20 A. I do see that. Yes.

21 Q. Are you aware, sir, that this so-called
22 "bankruptcy wave" began by the filing of Babcock & Wilcox
23 in early 2000?

24 A. Yes, sir, I am.

25 Q. So this is before the bankruptcy wave and the

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1 asbestos payments that are doubling in 1999. Do you see
2 that, sir?

3 A. Yes, sir, and we talked about that. That's the
4 inventory settlement part of the nonmalignant claims. If
5 you look at the underlying data, you will see that 90
6 percent of that is payments for nonmalignant claims.

7 Q. We'll get to that and an explanation of what you
8 mean by "inventory settlements." But for the moment,
9 let's turn to ACC-813. This is an excerpt from the
10 Coltec Industries against United States, a decision in
11 its tax case. When you arrived as a Coltec consultant,
12 did you learn that Coltec had engaged in litigation or
13 was engaging in litigation against the United States with
14 respect to a claimed tax benefit arising from the
15 creation of Garrison?

16 A. I certainly became aware of that. I can't tell
17 you exactly when I became aware of that.

18 Q. Did you learn, sir, that the creation of Garrison
19 and the capitalization of Garrison coincided with the
20 recapitalization of Garlock in the mid-1990s?

21 A. I learned about the capitalization of Garrison. I
22 didn't realize that it coincided with any
23 recapitalization of Garlock, but I'll take your word on
24 that.

25 Q. Well, that's my characterization. Unlike you, I

Cross - Magee

1 am not a corporate or securities lawyer. So you ought to
2 be a little bit cautious there, and I don't mean to
3 mislead you.

4 But I would like to point out that in connection
5 with that transaction in which Garrison was created as a
6 separate entity and in which notes, large multi-million,
7 hundred million-dollar notes, were exchanged between
8 Garrison and Garlock, Coltec asserted that the asbestos
9 liabilities being assumed by Garrison, those asbestos
10 liabilities of Garlock were on the order of \$375 million
11 when calculated to cover the estimated future asbestos
12 liabilities of Garlock, including anchor liabilities. Do
13 you see that?

14 A. I see that. Yes.

15 Q. Is that something you knew before you read that?

16 A. No, sir. I think I told Mr. Inselbuch in my
17 deposition that I never got involved in this case
18 because, at all times, Goodrich was going to keep
19 complete responsibility for this case and for the results
20 of this case. So I won't be able to talk about any
21 details of it. I was generally aware that -- of some of
22 the issues.

23 Q. Well let's go to the third page of this slide, I
24 guess it would be 815. This is a factual assertion made
25 by Arthur Andersen on behalf of Coltec in connection with

Cross - Magee

1 the litigation surrounding -- rather, the planning
2 surrounding the transactions and their tax effects which
3 became the subject of litigation. There is reference in
4 the appellate record there to a memo from Arthur Andersen
5 to Coltec stating, "The settlement, judgment and
6 litigation costs," we can put it in brackets, "of future
7 asbestos-related claims, net of assets and insurance
8 coverage are currently estimated to be \$375 million," end
9 of quote. Now let me just focus in on that.

10 That happens to be the amount that Garlock gave to
11 Garrison in exchange for Garrison's becoming responsible
12 for Garlock's liabilities; right?

13 A. I am aware of that. Yes.

14 Q. Now it says --

15 MR. CASSADA: Your Honor, may I interpose an
16 objection here under Rule 106? I mean, the Committee has
17 a document highlighted there. We don't get to see what
18 that document said. It seems like they're paraphrasing
19 it.

20 MR. SWETT: It's not a paraphrased document.

21 MR. CASSADA: Part of it -- part of the last one
22 was a paraphrase. It looks like the last sentence there
23 is. Rule 106, Your Honor, requires that if the party is
24 going to introduce a piece of a document, they have to
25 introduce the whole -- the entire document so that in

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1 fairness the entire document can be considered at one
2 time.

3 THE COURT: All right. Overruled. Go ahead.
4 We'll let him proceed.

5 BY MR. SWETT:

6 Q. I'll do that. First, I'd like to finish up on
7 this particular point.

8 It says the settlement, judgment and litigation
9 costs, net of assets and insurance coverage are currently
10 estimated to be \$375 million. What that is telling us,
11 isn't it, is that all of Garlock's work, including its
12 insurance, was exceeded by the estimated asbestos
13 liabilities as of the date of that memo in the mid-'90s
14 by almost \$400 million.

15 MR. CASSADA: I'll object again.

16 THE COURT: Overruled.

17 THE WITNESS: Again, I haven't seen this; I'll
18 take your word for it. And I'm confident that at least
19 90 percent of that amount would be for nonmalignant
20 claims.

21 BY MR. SWETT:

22 Q. Does it come as a surprise to you to learn that
23 according to Arthur Andersen, a professional serving
24 Coltec in the mid-1990s, Garlock was already insolvent by
25 almost \$375 million?

Cross - Magee

1 MR. CASSADA: Objection. No foundation.

2 THE COURT: Overruled.

3 THE WITNESS: I take exception to that
4 characterization. It does surprise me that this sentence
5 was written, but I take objection to that
6 characterization of Coltec's solvency.

7 MR. SWETT: Your Honor, I'm going to introduce
8 ACC-793, which is the complete opinion, and point out
9 that the information in brackets and also the empty
10 brackets are in the opinion. It's not something that we
11 did. So, ACC-793 will be offered into evidence at the
12 conclusion of our presentation, and I've given
13 Mr. Cassada a copy. I should give Coltec a copy too.

14 THE WITNESS: Mr. Swett, if I could add to that
15 answer, since you described it as having to do with
16 solvency. My understanding of solvency tests is there
17 are two solvency tests. One is, can a company meet its
18 obligations as they arise? Clearly, that was not an
19 issue for Coltec. The other is, was there a balance
20 sheet in solvency? Did their liabilities on the balance
21 sheet exceed their assets on the balance sheet? This was
22 not a liability on Coltec's balance sheet as we discussed
23 before, so there was no insolvency conveyed by anything
24 that had to do with this.

25 BY MR. SWETT:

Cross - Magee

1 Q. Well, let's don't get bogged down in the somewhat
2 pointy-headed technicalities of what "insolvency" means
3 in various contexts.

4 A. You chose that word.

5 Q. What this is telling us is the net assets plus
6 insurance of Garlock are substantially less than the
7 liabilities as estimated at that time; correct?

8 A. Again, I'm seeing this for the first time. It
9 attributes something to Arthur Andersen that I don't know
10 about, so I wouldn't choose to interpret that sentence.

11 Q. Okay. Well, let's move on. Certainly, we can
12 agree that from the time in which you became a Goodrich
13 consultant and on into the period when you became the
14 general counsel and senior vice-president of the newly
15 spun-off EnPro, asbestos litigation has been one of your
16 principal management problems; isn't that true?

17 A. Absolutely.

18 Q. You spent a very, very large percent of your time
19 year in and year out on the asbestos problem; isn't that
20 true?

21 A. Yes, sir, I did.

22 Q. Now when you first arrived, Garlock was in the
23 process of retreating from an experiment, I'll call it,
24 with a settlement approach that had not been its
25 historical norm and would not be its norm later. Isn't

Cross - Magee

1 that so?

2 A. That's correct. I believe there were lots of
3 defendants experimenting with that.

4 Q. Owens Corning had switched from being an
5 aggressive litigating defendant to being a massive
6 settler of asbestos claims; isn't that so?

7 A. I think that was true of a lot of defendants.
8 Yes, sir.

9 Q. That was happening in the late '90s?

10 A. Yes, sir.

11 Q. And the CCR, the Center for Claims Resolution, a
12 consortium of about 20 asbestos defendants, some of whom
13 would go bankrupt in the early 2000s, it had also
14 instituted what it called a national settlement program
15 reaching out to try and deal with the imponderable
16 problem of the massive numbers of nonmalignant claims.
17 Correct?

18 A. I was not involved in that, but that is my
19 understanding. Yes, sir.

20 Q. And Garlock itself, under Mr. O'Reilly's
21 leadership, decided to try its hand at that approach;
22 correct?

23 A. That is correct.

24 Q. And the result was disastrous, was it not?

25 A. It resulted, as I testified, in the expenditure of

Cross - Magee

1 lots of money. And rather than reducing the number of
2 nonmalignant claims, the more that was paid, the more
3 nonmalignant claims seemed to appear. So, yes, I would
4 certainly describe that as being a very unsuccessful
5 approach.

6 Q. Isn't it true Garlock paid more money under the
7 inventory settlement approach over 1999, 2000, 2001 and
8 2002 than it ever paid on that scale ever again in its
9 entire history until bankruptcy?

10 A. Yes, sir. They paid unbelievably large numbers of
11 dollars for what turned out to be recruited nonmalignant
12 claims.

13 Q. Can we take a look at ACC-745, please? I'm sorry.
14 That's the wrong slide. Let's go to ACC-814.

15 You testified on direct about your focus on
16 nonmalignant claims in the early 2000s and on into, as I
17 recall your testimony, and I'll be guided, of course, by
18 the transcript here, but I think you said 2002, 2003
19 nonmalignants were still something like 85 percent of the
20 financial burden of the asbestos litigation.

21 A. Yes, sir, I believe I did say that.

22 Q. As we see here, that's really not quite true, is
23 it? I've put in red the years 2002 through 2010. And I
24 want to compare the experience in 1999, 2000, 2001 to
25 that of several years after that. And the extreme

Cross - Magee

1 right-hand column gives you the percentage of the dollars
2 spent on asbestos indemnity that went to asbestos
3 mesothelioma claims. Do you see that, sir?

4 A. I see that. This is not my document. I'm not
5 familiar with this document.

6 Q. Well this comes out of your data. And you can, of
7 course, check the data at your leisure or have Dr. Bates
8 do so. But if this is correct, it's indicating, isn't
9 it, that the number of mesothelioma filings was trending
10 up in the early 2000s. Correct?

11 A. Yes, that's correct. That is my understanding.

12 Q. And a backlog was building up in terms of the
13 number of pending claims.

14 A. Right. Right. We talked about why I think that
15 was the case.

16 Q. And having bumped up to about a thousand
17 settlement mesotheliomas, up from 789 in 2001, the meso
18 settlements dipped down and then came back up in the
19 range of 1,000-1,100; right?

20 A. Right. That was my testimony that there was
21 approximately the same number of mesothelioma claims
22 resolved in each of those years.

23 Q. Now does it surprise you to see the calculation
24 that as early as 2002, that the percentage of dollars
25 going into the mesothelioma claims had increased from 17

Cross - Magee

1 percent in 2001, which is more or less consistent with
2 your earlier testimony, to 31 percent in 2002?

3 MR. CASSADA: Your Honor, just a quick objection
4 here. Again, he's using data that his expert has put
5 together that Mr. Magee hasn't seen. So I want a
6 continuing objection to the extent he's trying to get
7 Mr. Magee to validate data --

8 MR. SWETT: I'm not asking him to validate it.
9 I'm representing to him that this data comes out of
10 Garlock's database.

11 THE COURT: If he can answer the question, he can.
12 Overruled.

13 THE WITNESS: As you know, Mr. Swett, Garlock had
14 the blue book that reported its -- the information from
15 its system that was maintained by Garrison. That was
16 something that we talked about with Mr. Inselbuch at my
17 deposition. I believe that it has different numbers for
18 the payments in each of these years and would have
19 nonmalignant payments being in the -- still continuing to
20 be a majority of the payments made all the way until
21 2005.

22 So if I could have that document to compare, we
23 might be able to figure that out. I don't know where --
24 how this data was compiled or where it comes from, but it
25 does not -- it is not consistent with my memory about the

Cross - Magee

1 percentage of payments that were for mesothelioma claims
2 in those years.

3 BY MR. SWETT:

4 Q. And my question really goes to your state of mind.
5 I am telling you this comes from the Garlock database,
6 but you're entitled to an opportunity to check that and
7 I'm not asking you to embrace these numbers. I am
8 reinforcing what you said on direct, which is that your
9 focus throughout 2003, even on into 2004, was on the
10 nonmalignants and not the mesothelioma. Isn't that
11 right?

12 A. I was focused more on the nonmalignants because of
13 the dollars that were being paid to the nonmalignants.
14 That's correct.

15 Q. If I'm correct on here, the mesotheliomas are
16 creeping up rather significantly. I'd like to ask you
17 whether you think that your experience of several years
18 in dealing with the nonmalignant cases left you somewhat
19 ill-prepared for the very different challenges of the
20 mesothelioma cases.

21 A. I think we were behind on that. I absolutely
22 think that's true. And that's why, if you look at the
23 chart, we -- we showed -- that showed the record in the
24 '90s, the record in the first half of the decade of the
25 2000s, and the record -- the trial record in the second

Cross - Magee

1 half of the 2000s, I think that demonstrates it took us a
2 little while to catch up.

3 Q. In fact, the proof in the pudding as far as that's
4 concerned is what happened to Garlock in the tort system
5 in trials in 2004 and 2005. Isn't that so?

6 A. Yes. And we talked about what happened at those
7 trials.

8 Q. And then Garlock adjusted its settlement approach,
9 had fewer trials in the balance of the decade, and did
10 better in those trials that were conducted. Isn't that
11 so?

12 A. Again, we can talk about why the number of trials
13 happened that happened. Certainly, Garlock paid more
14 dollars; we saw how those averages. But about that time,
15 about 2006, the average payment for mesotheliomas leveled
16 off and stayed level throughout the remainder of the
17 decade.

18 Q. And that's a reflection, isn't it, of your
19 settlement approach?

20 A. It's partly -- as we talked about, it's partly a
21 reflection of settlement approach. It's also partly a
22 reflection of whether the plaintiff's lawyers could
23 continue to ratchet up the settlement amounts by
24 targeting Garlock and being successful at trial on
25 selected cases.

Cross - Magee

1 Q. Let's talk about -- I want to remind the Court of
2 the requirements for settlement that Garlock consistently
3 applied once it abandoned the inventory approach. By the
4 way, before we leave that, would you please explain very
5 briefly what's the difference between an inventory
6 settlement approach and the approach that Garlock
7 reverted to after it abandoned that experiment?

8 A. Well, I guess different people might define
9 "inventory approach" different ways. When I use that
10 description to define what was going on for Garlock in
11 the 1999 and 2000 timeframe, when they chose that
12 approach, it was when they were proactively trying to
13 resolve as many of those nonmalignants as they could.

14 They'd been sued in hundreds of thousands of
15 nonmalignant claims, they were trying to resolve as many
16 of those as they could at low-dollar levels to get them
17 off the books and behind them, because they were cases
18 that they had to deal with. And so they were trying to
19 deal with them and get them behind them for low-dollar
20 values. What resulted, as we talked about, is just more
21 and more of those claims coming in.

22 Q. So that's an approach that sort of goes out and
23 seeks for further claims to bring them in to settle;
24 isn't that right?

25 A. In some respects. The claims -- the claims were

Cross - Magee

1 there. They had been filed as lawsuits against Garlock.
2 They were trying to resolve claims that had been filed as
3 lawsuits against Garlock, but they were proactive in
4 trying to resolve those. Yes.

5 Q. Whereas, in the approach that you reverted to, you
6 made use of the trial docket, did you not, as a case flow
7 mechanism to restrain the pace of settlement?

8 A. Certainly, part of the strategy, as revised, was
9 not to pay a claim until it was ripe for payment because
10 it had been put on a trial docket and was about to be
11 tried or for some other reason it was -- it had the
12 attention of the plaintiff's lawyer who was demanding
13 payment and threatening to go to trial in the absence of
14 payment.

15 Q. Now the reversion to focusing on trial-listed
16 cases, as far as your settlement efforts are concerned,
17 was not universally applied by Garlock, was it? You did
18 have recourse to what we've described as group
19 settlements with various firms?

20 A. Yes, sir, that's correct.

21 Q. And was it not the essence of Garlock's approach
22 to identify firms that it wanted to make arrangements
23 with to settle early and cheap while focusing on the
24 trial-listed cases for those firms that were more intent
25 on taking cases through the process to try?

Cross - Magee

1 A. I don't think that's entirely accurate. Usually,
2 it was the law firm that chose whether we would do a
3 group deal by targeting Garlock in a case, bringing it to
4 trial. And then in the course of preparing for that
5 trial, or at trial, or immediately after trial,
6 attempting to settle that case with a group of cases.

7 Q. Well, let's see. That wouldn't be true of the
8 Weitz Luxenberg firm after 1993; would it?

9 A. Well as you know, and you played the clip from
10 Mr. O'Reilly, that -- the deal that was first entered
11 after 1993 followed exactly that pattern. It was after a
12 phase one verdict in cases against Garlock where Garlock
13 had been teed up in some phase one verdicts in New York
14 that led to a group deal. That's exactly what I was
15 trying to convey.

16 Q. And that deal persisted, was renewed after ten
17 years in 2003; correct?

18 A. It was renewed and tweaked and discussed all
19 along, but there was a deal in place for Weitz and
20 Luxenberg for pretty much the entire time.

21 Q. All the way up to the bankruptcy?

22 A. I believe that's the case. Yes.

23 Q. And how about the Simmons firm? The Simmons firm
24 didn't take you to trial in the 2000s, did they?

25 A. I'm not aware of a trial against the Simmons firm

Cross - Magee

1 in the 2000s. I am aware that the Simmons firm is a good
2 example of what we talked about when we talked about
3 low-cost avoidance payments. The average payment on
4 mesothelioma claims -- I don't know if what I'm going to
5 say is subject to any confidentiality protection,
6 Mr. Swett.

7 Q. Why don't we save it, then, until we close the
8 courtroom.

9 A. Okay. Remind me of the point I want to make on
10 that.

11 Q. You've just characterized them as fairly low-cost
12 avoidance settlements?

13 A. Yes, sir.

14 Q. And you had similar deals with the Cooney and
15 Conway firm in Chicago?

16 A. Yes, sir. We were able to settle large numbers of
17 claims in dangerous -- what folks refer to as a dangerous
18 Illinois jurisdiction, Madison County and Cook County,
19 with those firms at very low-average values.

20 Q. By offering the plaintiff certainty and quickness
21 in payment; correct?

22 A. That's correct. At very low-cost avoidance
23 payments for us.

24 Q. And you had deals like that in place with a lot of
25 different prominent firms, didn't you?

Cross - Magee

1 A. I would -- I wish that we had had the deals that
2 we had in place with those firms with lots of prominent
3 firms. Yes, sir.

4 Q. Lanier?

5 A. I'm not familiar with the details of our deal with
6 Lanier. I know we had some trials with Lanier.

7 Q. Let's talk about -- let's remind the judge of
8 Garlock's approach once it had abandoned the inventory
9 settlement experiment. You required medical evidence of
10 mesothelioma, a diagnosis satisfactory to Garlock.
11 Correct?

12 A. That's correct. In a mesothelioma case, we
13 required a mesothelioma diagnosis that our folks could
14 review and determine was legitimate.

15 Q. And you required evidence that the plaintiff
16 worked with or around Garlock's asbestos-containing
17 products?

18 A. That's correct. In the form of an affidavit or a
19 co-worker affidavit or other evidence, again, sufficient
20 to the Garrison team.

21 Q. And you required a release?

22 A. That's correct.

23 Q. And that was a complete release of Garlock?

24 A. Yes, sir.

25 Q. And usually a release, also, of most of its or all

Cross - Magee

1 of its affiliates?

2 A. That's correct.

3 Q. As for the product identification evidence. The
4 standard that would meet your requirements would vary,
5 would it not, from deal to deal?

6 A. And probably from claimant to claimant. Yes, sir.

7 Q. It had to do in some way, did it not, with the
8 price of the settlement?

9 A. Certainly, given that some of those deals that you
10 have discussed were done exclusively for cost-avoidance
11 purposes where we could pay very low-dollar amounts to
12 resolve mesothelioma cases that did not have to be worked
13 up. Then we required -- required product ID and exposure
14 evidence. But the standard for that would be something
15 that could be checked fairly quickly. Again, the whole
16 purpose of those deals was to avoid costs.

17 Q. And the cost savings inured to the benefits of the
18 plaintiffs as well. They didn't have to work up those
19 cases either, did they?

20 A. Well, they didn't have to work those cases up
21 against Garlock. I'd suspect, and am confident, they
22 were working those cases up against other defendants.

23 Q. But they didn't have to focus on their Garlock
24 proof beyond providing whatever level of product
25 identification evidence would satisfy you in the context

Cross - Magee

1 of the particular deal?

2 A. That's correct, which would have had to put their
3 claimant in a place with Garlock gaskets where they could
4 have alleged exposure to fibers from those Garlock
5 gaskets.

6 Q. But they didn't have to work up that proof with
7 the same focus and detail that they would have if they
8 had gone to trial?

9 A. Absolutely. They just had to demonstrate it.

10 Q. And when you entered a settlement and promised
11 payment, Garlock intended to be bound by that agreement,
12 didn't they?

13 A. Certainly. That's what a settlement was.

14 Q. So when the releases say they expressly denied
15 liability, they were talking about the unliquidated tort
16 claim. Garlock never conceded that it had -- that it had
17 liability on the unliquidated tort claims; correct?

18 A. I'm not sure what you mean by "unliquidated." The
19 purpose of the settlement was to liquidate the tort claim
20 against Garlock. And it required that there be in the
21 settlement an affirmation that that settlement was not an
22 acknowledgment of any liability.

23 Q. Up to the point where the settlement agreement
24 itself put a number on the claim, it was disputed and
25 unliquidated. Correct?

Cross - Magee

1 MR. CASSADA: Objection. Mischaracterizes his
2 testimony and the settlements.

3 THE COURT: Overruled. Go ahead.

4 THE WITNESS: Up until the time of the settlement
5 agreement, it was disputed and unliquidated. I agree
6 with that.

7 BY MR. SWETT:

8 Q. And the settlement agreement liquidated the
9 agreement.

10 A. That's correct. That's what I meant to say. If I
11 misspoke --

12 Q. Turned it into a sum of money.

13 A. Correct.

14 Q. That Garlock had a legal obligation under the
15 settlement to pay.

16 A. Yes. As long as the terms of the settlement were
17 met; as long as they produced the information required by
18 the settlement agreement. Sometimes those group
19 settlement deals agreed to a number if that information
20 was provided. So it only became a binding obligation
21 when that information was provided. And often, Garlock
22 rejected submissions under those settlement agreements.

23 Q. Conditioned on the plaintiff's performance in
24 meeting the criteria?

25 A. Correct.

Cross - Magee

1 Q. Okay. Now when Garlock made such a settlement and
2 required that the settlement be conditioned on the
3 submission of product identification evidence, that
4 evidence that the plaintiff had worked with or around
5 Garlock products, it did not require the plaintiff, did
6 it, to make any representations in the settlement
7 documents with respect to what other exposures to other
8 people's products the plaintiff might have?

9 A. No. That was not the purpose of that submission.

10 Q. That was never a condition of settlement?

11 A. That was not a condition of settlement.

12 Q. Right. Now you made some common-sense assumptions
13 about a claimant's likely exposure based upon his
14 occupation, job function and where he worked; correct?

15 A. I'm not sure I made any assumptions, Mr. Swett.
16 Those were the terms of the deal.

17 Q. Well let me remind you of your testimony on June
18 28th of 2013 in the deposition we took of you. You were
19 asked at page 156, line 3:

20 "Looking at the row for Mr. Dougherty on
21 GST-EST055-6246, is there in that row any
22 information about non-Garlock exposure?"

23 Answer: "I guess it depends on what you mean.
24 Specifically, no; generally, yes."

25 Question: "How do you mean "generally, yes?"

Cross - Magee

1 Answer: "Bethlehem Steel is identified there. So
2 that's obviously his employment, so that suggests
3 exposures consistent with Bethlehem Steel."

4 See that?

5 A. Yes.

6 Q. That was your testimony; right?

7 A. Yes. Would you like to know the context of that
8 testimony?

9 Q. I'd like to ask you this question: You were
10 saying, were you not, that without having discovery,
11 without having detailed representations by a plaintiff
12 when you came to a case cold, you looked first at what
13 the guy's job was, what industry he worked in and where
14 he worked. Isn't that so?

15 A. Those were important factors. This was a trial
16 evaluation form. So, simply -- we were discussing in my
17 deposition why there might be some information about
18 other exposures in this Trial Information Form and I told
19 you that because Bethlehem Steel -- or I told whoever was
20 doing the deposition that because Bethlehem Steel was
21 identified here, that would have been a place where
22 Garlock's lawyers would have gone to look to develop
23 other exposure information.

24 Q. Right. And the further question was -- and he
25 said, "I see." And you said, "It says he was a

Cross - Magee

1 Bethlehem Steel welder and grinder." The questioner
2 said, "Right." And you continued, "So that has some
3 implications for exposure."

4 Question: "Right. So when Garlock got this
5 information from Segal McCambridge, it's looking at
6 Bethlehem Steel and knows that certain kinds of
7 non-Garlock exposures are likely going to follow from the
8 fact that the guy worked at Bethlehem Steel."

9 There was an objection. You answered, "Well, it
10 certainly is an indication of where to look." Right?

11 A. That's exactly what I was just trying to relate to
12 you.

13 Q. All right. Now, a little background on Garrison.
14 Garrison was, in essence, an in-house legal department
15 separately incorporated. Correct?

16 A. That's correct.

17 Q. It had four lawyers and a paralegal staff.

18 A. Through most of the time periods. That's correct.
19 And some finance folks.

20 Q. It was the principal interface with Garlock's
21 large network of defense attorneys throughout the
22 country?

23 A. Correct.

24 Q. The lines of reporting went from the outside
25 lawyer to the regional counsel to Garrison.

Cross - Magee

1 A. It wasn't quite that formal. But, yes, the
2 Garrison folks dealt directly with trial counsel
3 throughout the country. The regional counsel helped them
4 with that process, but they were hands-on involved with
5 trial counsel as well.

6 Q. For the most part, you intersected with the
7 problem through the president of Garrison and the lawyers
8 on the line for Garrison --

9 A. That's correct for the most part.

10 Q. -- the in-house lawyers.

11 A. That's a fair generalization. Yes.

12 Q. You are aware, are you not, that sometime in the
13 rather remote past Garlock had bought in large blocks of
14 its insurance, meaning it had converted its policies into
15 coverage in place. Are you aware of that?

16 A. Correct. There were insurance agreements. There
17 was a large insurance agreement that covered lots of the
18 insurers. That's correct.

19 Q. You understood, did you not, that this was done to
20 eliminate the risk that the insurers might be motivated
21 to settle cases quickly in order to exhaust their limits
22 and get out from under unlimited defense coverage --
23 defense cost responsibility. Correct?

24 A. Well, again, that -- most of that was done in '95.
25 I did some of that in the 2000s. I can tell you what my

Cross - Magee

1 motivation was in the 2000s. All I know about the
2 mid-'90s was that it was done and that insurance was in
3 place. I suspect you asked Mr. O'Reilly about his
4 motivations for that and, obviously, he was the one that
5 would have done that. So whatever he said his
6 motivations were, those must have the been his
7 motivations.

8 Q. Actually, it was Mr. Glaspy who testified in open
9 court to that way back in March of 2011. Do you have any
10 reason to disagree with that account?

11 A. All I'm saying is I don't know the motivations. I
12 don't -- if our people said what the motivations were, I
13 wouldn't disagree with the motivations.

14 Q. These insurance in-place agreements gave the
15 insurers audit rights, did they not?

16 A. They did. Yes.

17 Q. So even though they were -- they were creating a
18 lump sum of cash that you could draw on for asbestos
19 settlements, they did retain the right to require that
20 that money be applied for the intended purposes and so
21 they have some right to audit the settlements. Correct?

22 A. That's correct.

23 Q. None of your settlements ever failed upon audit?

24 A. Sometimes they were questioned, but as far as I
25 know they never failed. That's correct.

Cross - Magee

1 Q. Now in conjunction with your renewed approach on
2 -- focus on trial-listed cases from the standpoint of
3 settlement. You worked hard also, did you not, to create
4 the perception in the minds of the plaintiff's bar that
5 Garlock was willing to go to trial; it wasn't just
6 handing out money. Isn't that so?

7 A. I did not want there to be an impression that
8 Garlock was just handing out money. That's correct.

9 Q. You wanted the plaintiff's bar to understand that
10 if they pushed you too far, Garlock would go to trial and
11 test their cases in front of juries.

12 A. That's correct.

13 Q. And that wasn't just a perception. It was real,
14 wasn't it? That was, in fact, Garlock's real approach.

15 A. I'm not sure what you mean. There were trials
16 that occurred because plaintiffs' lawyers were targeting
17 Garlock in select cases demanding higher settlements not
18 only for that case but for other cases. Garlock refused
19 to pay those higher settlements and so those cases went
20 to trial. If that's what you mean, yes, sir, that
21 happened.

22 Q. Well what I mean is, basically, the statement that
23 appears in your -- in your 10-Ks year in and year out to
24 the effect that if Garlock didn't get what it considered
25 to be a reasonable demand in all the circumstances,

Cross - Magee

1 Garlock would try the case.

2 A. That's a paraphrase, but that's generally what was
3 said.

4 Q. And that was its posture throughout the 2000s up
5 until the bankruptcy.

6 A. If plaintiff's lawyers tried to raise the level of
7 the settlements with Garlock that Garlock would not agree
8 to raising those settlements without the claimant's
9 lawyer taking that case to trial.

10 Q. Okay. Now you also, as we've heard at some
11 length, created annual budgets in the nature of targets
12 as to what you and Mr. Grant, head of Garrison, thought
13 you could achieve by way of controlling the outflow of
14 indemnity payments in the coming year. Correct?

15 A. Yes, sir. That was what I thought was a good way
16 to incentivize and motivate our team.

17 Q. And you used those targets as the basis for annual
18 incentive compensation to the Garrison attorneys.

19 A. Yes. That was my point. Yes, sir.

20 Q. And the Garrison attorneys were, indeed, awarded
21 annual bonuses every year during your tenure in that
22 position.

23 A. They were. Not always because the targets were
24 met; sometimes because we decided they deserved a bonus
25 anyway. But they were -- as far as I can remember, they

Cross - Magee

1 were awarded some bonus in every year of my tenure.

2 Q. They had a pretty hard job, didn't they?

3 A. Very much so. Yes, sir.

4 Q. Your goal was to reduce the annual commitments by
5 way of indemnity payments to claimants every year.

6 A. Certainly, the commitments. But more than the
7 commitments, the payments. I mean, obviously commitments
8 turn into payments. But yes, sir, that was -- I think we
9 established in my deposition that my focus was on cash
10 flow. How much were we spending to resolve claims? How
11 much were we spending on defense costs? And how much
12 were we collecting in insurance? What is the net amount
13 that Garlock is going to have to pay for those claims?
14 So, yes, sir, that was my focus.

15 Q. The way you put it, sometimes you managed on a
16 top-down basis with a view to controlling the aggregate
17 net cash outflow for asbestos claims.

18 A. Absolutely.

19 Q. And that's a focus that you maintained throughout
20 the entire period?

21 A. Yes, sir.

22 Q. And that, in turn, implied, did it not, a focus on
23 the average dollars per claim resolved.

24 A. The average dollars per claim resolved would have
25 been something you could calculate from that. But if you

Cross - Magee

1 look at those spreadsheets that you've put up before and
2 that we talked about, there's no average per claim
3 amount. We're talking about total dollars in there. But
4 obviously, if the average per claim amount rises and
5 you're resolving the same number of claims, then you're
6 going to be paying more dollars.

7 Q. Well when you were evaluating particular group
8 settlements, you were much more focused, were you not, on
9 the aggregate dollars that that deal would cost you than
10 you were on what would be allocated to any given
11 plaintiff?

12 A. I would say we were focused more on the aggregate
13 dollars, but the aggregate dollars had to make sense in
14 terms of the claims. In other words, lots of those
15 settlements had annual caps to the aggregate dollars.
16 But the cases had to be presented that met the criteria
17 and that got paid at the average -- at those amounts. So
18 in lots of those deals, the number of cases that could
19 have been paid under the average caps were not submitted
20 and those average caps Garlock paid less than the average
21 cap in the year. So, both of those things were very
22 important.

23 Q. I understand. Let me just get a document here.

24 Mr. Magee, you have sometimes pointed with pride
25 in this trial to the won-loss record of Garlock at the

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1 trial of mesothelioma cases as an indication of the
2 strength of its defenses and of your view that Garlock
3 really has no liability. Isn't that so?

4 A. If I pointed to that record with pride, then that
5 was a mischaracterization. I think we should have won
6 every one of them.

7 Q. But in fact, you settled, as you testified
8 yesterday, almost 100 percent of the cases. It's 99.9
9 percent or something like that?

10 A. We settled a large majority of the cases. Yes,
11 sir.

12 Q. Right. Settlement was the preferred method of
13 getting the cases resolved. You'd rather do that than go
14 to trial almost all the time.

15 A. Well I guess the preferred method depends on what
16 you mean. Certainly, my preferred method was to spend
17 less money than more money. And when I could resolve
18 cases with low-cost avoidance settlements that were far
19 less than the amount it would have cost me to defend and
20 win the case, then that was -- reluctantly, my preference
21 was to do those settlements.

22 Q. You're aware that Dr. Bates has cited writings by
23 Professor George Priest of the Yale Law School?

24 A. I believe I am aware of that. Yes.

25 Q. And indeed, Professor Priest was listed as one of

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1 your-all's experts in the case. Correct?

2 A. I wish we had time for you to hear him.

3 Q. You're aware of the article he wrote in 1984
4 called "The Section for Disputes Over Litigation?"

5 A. Personally, I'm not aware of that article.

6 Q. That's one cited by Dr. Bates. Let me just read
7 you something that Professor Priest quotes and see if you
8 agree with it. It has to do with his conclusion of which
9 I believe you are aware, at least if you heard Dr. Bates'
10 testimony, that the cases taken to trial and verdict are
11 neither random nor representative. Are you familiar with
12 that concept?

13 A. I heard that yesterday, and I sat through
14 Professor Priest's deposition. I believe that quote was
15 used there. Yes.

16 Q. You may remember my asking him about this
17 quotation, which appears at page 2 of his article in the
18 Journal of Legal Studies, XIII Journal of Legal Studies,
19 1984. He refers to the famous legal realist scholar Karl
20 Llewellyn. And he says this: "Karl Llewellyn, for
21 example, regarded litigated cases as 'pathological.'"
22 And then he goes on, "Bearing the same relation to the
23 broader set of disputes," and now he quotes again, "as
24 does homicidal mania or sleeping sickness to our normal
25 life." End of quote. That's a pretty graphic

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1 explication of the idea that the cases that end up on
2 Garlock's verdict summary are radically distinct, are
3 they not, from the great mass of cases that Garlock tried
4 to verdict?

5 A. I wouldn't purport to try to interpret what that
6 sentence meant. With respect to your interpretation, I
7 believe that's very consistent with what I'm saying, that
8 these cases were specially selected by the plaintiffs'
9 firms to try to extract higher settlements in general and
10 on lots of cases from Garlock.

11 Q. And selected by Garlock in the sense that they
12 drew a line in the sand and said no, we won't go there;
13 we're going to see what the jury says.

14 A. If you mean Garlock selected them by refusing to
15 pay the higher settlement demands and you said no, it's
16 your choice. You take us to trial, you take our
17 settlement offer consistent with what we've been paying
18 or you drop the case. Then if that's -- if that's --
19 that sounds like a prisoner's dilemma kind of choice to
20 me. But if that's what you mean, then yeah, that was
21 Garlock's choice.

22 Q. Let me read to you further from what Professor
23 Priest has to say on the subject of a repeat player.
24 "That is to say, a defendant who's involved in a
25 generation of litigation, as opposed to the individual

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1 plaintiff who's got his one shot and then it's over."

2 That's a fair characterization of Garlock's position;
3 right? It's going to be facing these cases for the next
4 40 years.

5 A. Yes.

6 Q. And Mr. --

7 A. It would have been. And as I said yesterday, it
8 chose this forum to get certainty, finality and fairness.

9 Q. And if it doesn't face these claims in the next 40
10 years because it succeeds in obtaining a discharge or the
11 functional equivalent through a channeling injunction,
12 then some other entity derived of Garlock, namely a
13 trust, will face those claims year in and year out over
14 the coming decades?

15 A. That's correct.

16 Q. Now Professor Priest says this, and I'm on page 28
17 of the same article. "Obviously, where one of the
18 parties is engaged repeatedly in the activity leading to
19 the dispute, a repeat player in Galanter's terms" --
20 Galanter is another scholar -- "the model predicts that
21 this party will prevail more frequently in litigation for
22 selection reasons alone." Were you aware of that
23 concept?

24 A. I'd be glad to look at the article and read it and
25 see if I agree with it.

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1 Q. Well, by way of explication, I'm going to turn to
2 another Professor Priest article. This one is in Volume
3 III of the Journal of Law and Economics and Organization,
4 page 193 in 1987. He says this at page 208. He's
5 involving -- he's involved here in a discussion of
6 strategic litigation, litigation undertaken for purposes
7 other than the resolution of the given dispute but for
8 some broader purpose.

9 And he goes on to say this, "The manufacturer of a
10 product found defective in contrast to a product's
11 liability plaintiff is a potential party to large numbers
12 of cases, similarly in contrast to a malpractice
13 plaintiff. A malpractice defendant is interested not
14 only in the judgment but also in the effect of the
15 judgment on the defendant's reputation. For these
16 reasons, such defendants are more likely to want to
17 settle cases in which plaintiffs have superior chances of
18 winning and to litigate cases which they, as defendants,
19 are likely to win. The litigation strategy will lead to
20 a plaintiff's success rate less than 50 percent." That's
21 the end of the quote.

22 Are you familiar with that concept?

23 A. I'm not familiar with the concept. And that is
24 absolutely not what was going on here.

25 MR. SWETT: Your Honor, we're at a point where,

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1 reluctantly, we have to ask that the court be closed.

2 THE COURT: Okay. I'm going to have to ask that
3 anybody that hasn't signed a confidentiality agreement to
4 leave now and we'll welcome you back as soon as we can.

5 (Whereupon, the following proceedings
6 contain confidential portion of the
7 proceedings and will be redacted from the
8 public record.)

9 BY MR. SWETT:

10 Q. You testified, sir, in relation to the origins of
11 the Weitz and Luxenberg deal about the "in extremis"
12 docket in New York. You explained the result in that
13 phase one trial that Mr. O'Reilly discussed in terms of
14 the burdens and disadvantages to Garlock of having cases
15 on the "in extremis" docket in New York City; correct?

16 A. Yes, sir, in particular where they were tried in
17 reverse bifurcation. That's correct.

18 Q. Let's remind ourselves of Mr. O'Reilly's testimony
19 and watch that clip.

20 (Video begins playing at 10:33 a.m.)

21 MR. SWETT: Your Honor, there seems to be a system
22 down here.

23 (Video stops playing at 10:36 a.m.)

24 BY MR. SWETT:

25 Q. That was Mr. O'Reilly. He was Mr. Grant's

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1 predecessor as the head of Garrison; correct?

2 A. Yes.

3 Q. Now when you testified about that on direct, you
4 spoke in terms of the "in extremis" docket. That's a
5 docket that exists in New York City that's intended to
6 get mesothelioma victims to trial before they die. Isn't
7 that so?

8 A. That's correct. I believe cancer victims, whether
9 it's mesothelioma or other cancers. But, yes, sir.

10 Q. And in a large population center like New York
11 City there is, unfortunately, a not inconsiderable number
12 of persons in that predicament. Isn't that so?

13 A. Yes, sir.

14 Q. And "in extremis" dockets or other sorts of living
15 mesothelioma victims exist around the country?

16 A. There are other jurisdictions that have that.
17 Yes.

18 Q. And it is generally recognized, is it not, that a
19 mesothelioma claim is more valuable if the victim is
20 living at the time of trial than if the victim is dead?

21 A. Yes, I believe that's the case. Although I'd
22 probably put an asterisk on that and say if the claimant
23 was living at the time that the case was filed so that
24 that asbestos claimant could have his deposition
25 videotaped. I believe that was an equally effective and

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1 should have been an effective sympathy strategy. It's a
2 horrible disease.

3 Q. Now, the phase one trial that Mr. O'Reilly spoke
4 about was one of those situations where under the rules
5 of the particular court, you tried damages and presence
6 of disease and damages before you determined -- before
7 the jury determines any given defendant's liability for
8 those problems; right?

9 A. That's correct. That's what phase one was, a
10 damage-only phase.

11 Q. So it's not as though that phase one trial led to
12 an actual judgment of liability on Garlock's part;
13 correct?

14 A. It led to no determination of liability on
15 Garlock's part.

16 Q. Garlock, instead, settled the case in the middle
17 of the trial.

18 A. It settled those four cases and a lot of other
19 cases that it had pending with Weitz and Luxenberg,
20 including cases of all diseases, including
21 nonmalignancies.

22 Q. You're aware that in New York, there is joint and
23 several liability, notwithstanding its comparative fault
24 rules, if the defendant is found more than 50 percent
25 liable?

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1 A. That is my understanding. Yes.

2 Q. You're also aware that under the same scheme, the
3 defendant is jointly and severally liable for all damages
4 if the defendant is found to have been reckless of the
5 safety of others?

6 A. I believe that's the case. Yes.

7 Q. So what Garlock was looking at when the jury came
8 back valuing the four victims damages at \$75 million was
9 the possibility of not saying with certainty, but the
10 risk presented was \$75 million to Garlock. Right?

11 A. Well, let me first say your question
12 mischaracterizes that situation. The \$75 million amount
13 that Mr. O'Reilly referred to, there was the total amount
14 of the phase one verdicts in all the cases that were
15 being tried, 32 cases that were being tried on a
16 consolidated basis on that docket that led to damage
17 awards in all 32 of those cases that totaled \$75 million.
18 Garlock was in four of those cases.

19 Q. I see.

20 A. I just want to make sure you understand it wasn't
21 four cases and \$75 million worth of damages.

22 Q. Well Mr. O'Reilly's testimony and -- first of all,
23 let's back up. What you're recounting is the
24 understanding you gained when you came on to the scene at
25 Garrison as to the background of the Weitz and Luxenberg

Cross - Magee

1 deal; correct?

2 A. No. That understanding came about as a result of
3 research after you played this clip in your opening.

4 Q. Well we haven't seen the benefit of the research,
5 so what we have to go on is Mr. O'Reilly's testimony. So
6 let's just suppose --

7 A. Well if you look at what he said, he said you saw
8 the results \$75 million in phase one verdicts and that
9 was the result for a consolidated group of 32 cases, four
10 of which Garlock was a defendant in.

11 Q. Now Garlock has in its whole history paid what 261
12 claims, more than \$250,000?

13 A. 251. Yes, sir.

14 Q. So I just want to graphically illustrate the
15 magnitude of a risk presented to Garlock by a verdict on
16 the order of \$75 million.

17 Mr. Walker, would you show ACC-753, please?

18 This is just a simple illustration intended to
19 give us a mental framework for measuring what -- I'm not
20 quarreling with your characterization of the case, but
21 let's suppose a real risk of \$75 million in some group of
22 cases. That exceeds by a large amount what Garlock has
23 paid -- if Garlock paid 210 cases, \$250,000 each. And
24 I'm not representing that as a fact, I'm just setting up
25 this comparison, it would come up with damages of just

Cross - Magee

1 over \$52 million. And in one fell swoop in consolidated
2 trials, Garlock could realistically be looking at more
3 liability than that. Isn't that so?

4 A. I just don't believe that's the case in your
5 example, Mr. Swett, because, again, that was the amount
6 for the 32 cases. Secondly, that assumes that Garlock
7 was the only defendant in those phase one trials.
8 Garlock was one of several defendants in those phase one
9 trials.

10 Q. I'll remind you of your admission to me that in
11 New York if Garlock were found reckless, it would be
12 responsible for the entirety of the verdict.

13 A. Not if it were a defendant there present with
14 other defendants. I mean those defendants would have
15 shared in that responsibility, Mr. Swett.

16 Q. Well Garlock might be left to contribution claims,
17 but Garlock would stand to be liable for the entirety of
18 the verdict in a case in which it was a defendant.

19 A. If Garlock had been targeted and was the only
20 defendant at trial, then yes, that scenario could have
21 played out.

22 Q. Or if Garlock had co-defendants and was found 50
23 percent or more liable or was found reckless, isn't that
24 so?

25 A. Yes, sir. But those -- if those defendants were

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1 also -- other defendants were also found that way then,
2 obviously, claimant's lawyers wouldn't have collected
3 only from Garlock.

4 Q. They would have that right, wouldn't they? That's
5 what joint and several liability means.

6 A. Yes.

7 Q. And then Garlock, in that situation, would be left
8 to turn to the co-defendants and pursue contribution
9 claims; right?

10 A. Which, theoretically, I understand what you're
11 saying, but that -- if all those defendants had been
12 found responsible, certainly they would have divided
13 those payments rather than have to go through --

14 Q. The question is: How and at whose expense that
15 process would go forward? And in a joint and several
16 regime, the defendant held liable is liable to the
17 plaintiff for the entire verdict and is left to its
18 pursuit of contribution claims as it wants to chew up the
19 score with the other defendants. Right?

20 A. Again, I don't want to quibble with your example.
21 If they were also found liable, then it would not have
22 been -- and for some reason the claimant chose only to
23 collect from Garlock, the fact that they were there
24 defending themselves and were found liable would not have
25 made that contribution claim a very expensive or a very

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1 lengthy one.

2 Q. In fact, Garlock never pursued contribution claims
3 in earnest, isn't that so, with three exceptions having
4 to do with trusts?

5 A. I take exception to that. Because those
6 contribution claims were deemed to have been filed in
7 almost every jurisdiction. It was the defendants.

8 Q. But Garlock never defended a single one until it
9 went to trusts on the Puller, Snyder and Wilson cases;
10 isn't that so?

11 MR. CASSADA: I'll object. Lack of foundation.

12 THE COURT: Overruled. He can answer if he knows.

13 THE WITNESS: It certainly did on those three
14 cases.

15 BY MR. SWETT:

16 Q. Any others before that not involving bankrupts?

17 A. Where we're talking about verdicts?

18 Q. You only get contribution if you take a verdict.

19 A. Exactly. That's what I'm saying. There were very
20 few verdicts, and those tended to be settled after the
21 verdicts. Once the settlement occurs, Mr. Swett, then
22 there's no contribution claim left.

23 Q. My point exactly. Let's remind ourselves -- let's
24 shift focus to the claims that have been a focus of
25 Garlock's in this trial. You might remember this slide

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1 from the opening. You've had some comments on it. We
2 called it Garlock's "designated" mesothelioma claims in
3 perspective. In fact, we made a little mistake. Because
4 if I heard Mr. Cassada correctly the other day, the total
5 number of designated claims, meaning the ones in which he
6 deposed plaintiffs' lawyers, were only 15, not 18. So we
7 got -- we gave you a little bit of a bump there. But
8 this was our effort to put into context the RFA-1 list
9 and RFA-1A list just to remind you or see if you share my
10 understanding.

11 The RFA-1A list is the list of claimants about
12 whom Garlock expressly reserved the right to introduce
13 evidence at this trial of concealment, nondisclosure, or
14 other irregularities in discovery that it contends it
15 relied upon with the result that the settlements were
16 inflated. Do you share that understanding?

17 A. Yes. That understanding was -- because it's RFA,
18 because it was a request for admission, Garlock had a
19 fairly short time period to respond to your request for
20 admission to give the whole universe of claims that it
21 might rely on in this proceeding for that fact situation
22 --

23 Q. Lest there be any misunderstanding. That
24 stipulation came about as a result of a series of motions
25 that culminated in a stipulation last July that was later

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1 amended that produced a series of disclosures by Garlock
2 up until February of 2013. So that wasn't all that much
3 of an emergency, was it? You had a fairly decent period
4 of time in which to work out your contentions.

5 A. And the amount of the -- the number of files and
6 the amount of material that had to be reviewed to do that
7 was very extensive. Those files had to be gathered from
8 the field, brought in, reviewed by teams, summarized,
9 analyzed. It was an unbelievably extensive project.

10 Q. I can appreciate that because I've been on the
11 other side of it trying to cope with the mass of material
12 that you-all purport to have summarized. But my point
13 now is simply that the RFA-1A list are the cases where
14 you have reserved the right to direct your evidentiary
15 fire on subjects of discovery abuse in the torts; right?

16 A. Yes.

17 Q. Whereas, the RFA-1 list is the broader list of
18 cases that you intend were inflated as a result of
19 discovery concealments or nondisclosures, or the like,
20 but that you have not given notice that you're going to
21 be putting in specific evidence about those cases;
22 correct?

23 A. Yes, sir. And that was the subject of the 205
24 listed on the exhibit that was offered in my testimony
25 yesterday that demonstrates despite the limited amount of

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1 discovery on that case -- on those cases, the number and
2 nature of the nondisclosures in those cases.

3 Q. You're relying on inferences with respect to the
4 210 from DCPF data and ballots; correct?

5 A. I'm relying on conclusions reached by lawyers who
6 were retained to go through those files and make those
7 determinations.

8 Q. Well, am I not correct that what gets a case onto
9 the RFA-1 list is some analysis that Robinson Bradshaw
10 did of ballots and data produced by the Delaware Claims
11 Processing Facility?

12 A. On the one hand, and by deposition and
13 interrogatory testimony on the other hand to make a
14 comparison.

15 Q. Mr. Magee, this is important. The stipulation is
16 that Garlock has the right to put in evidence on the
17 RFA-1A list claims but it is left to inference with
18 respect to the RFA-1 list, isn't that so?

19 A. I don't know what the agreement was.

20 Q. Much of your testimony has been geared at
21 persuading the judge that there's some rational inference
22 to be drawn from the 15 designated claims and the 26
23 RFA-1A list claims all the way to the 210 which
24 constitute the bulk of the cases Garlock ever paid more
25 than \$250,000 in. Correct?

Cross - Magee

1 A. I don't know what you mean about "inferences." We
2 provided the information that that extensive review
3 resulted in.

4 Q. Now let's look at RFA-1A, which is -- excuse me
5 just a minute. I don't seem to have this in the system,
6 Judge, so I'll just describe it. It's 26 cases. It
7 lists the claimant and the colt ID, and from that
8 information we were able to be identify the law firms who
9 were sponsoring these claims. And let me just read you
10 their names. There are some claims on here by Belluck
11 and Fox. There's a couple claims -- several claims Baron
12 & Budd. There's the Shein firm. There's the firm called
13 Mundy Singley. There's Peter Angelos. There's Simon
14 Eddins, Williams Kherkher; Waters & Kraus. That's it.
15 So those are the few law firms who have been treated to
16 being singled out by way of the RFA-1A list.

17 Now I want to show you RFA-1 with some
18 highlighting that we have added to it. This is ACC-796.
19 We have added the yellow highlighting to show which
20 claims on this list of 200-plus are not affiliated with
21 the law firms whose names appear with the claims on
22 RFA-1A. And as we flip through this page by page, you
23 can see that a great many of the claims listed on RFA-1
24 are not associated in Garlock's data with the law firms
25 who are -- who have claims on RFA-1A. Does that surprise

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1 you?

2 A. Not a bit.

3 Q. Well what it comes out to is a count which is set
4 forth in our ACC-812, which is a little tabulation we've
5 done, that shows that of the 210 claims on RFA-1,
6 actually 109 are represented by lawyers who have no claim
7 on RFA-1A. And we underscore that just so that the judge
8 can appreciate the great leap that Garlock is asking him
9 to take from RFA-1 to the 210 and beyond, if I understand
10 your arguments correctly. And now, sir --

11 A. Mr. Swett, we would have loved to have gotten the
12 same discovery with respect to those other law firms that
13 we got with respect to the law firms that you've listed.

14 Q. And in the tort system, it wasn't worth it to you
15 to do that, was it, Mr. Magee? You spent a lot of money
16 avoiding discovery through these group deals and other
17 settlements, didn't you, because you were focused on cost
18 savings?

19 MR. STUKES: Objection, Your Honor. Can he answer
20 the question instead of letting Mr. Swett testify during
21 this entire cross-examination?

22 THE COURT: Sustain the objection.

23 THE WITNESS: Just to complete my answer.

24 Mr. Swett, the RFA-1 list contained the claims from the
25 law firms we were able to get -- the 1A list -- that we

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1 were able to get the further discovery from so that we
2 could have a more complete evidentiary record of all of
3 the total amount of the nondisclosures.

4 BY MR. SWETT:

5 Q. Let's be clear. Where you got the plaintiffs'
6 lawyer's depositions, that's RFA list one, that's 15 out
7 of the cases on that list. Do you have that
8 understanding?

9 THE COURT: That's 1A.

10 BY MR. SWETT:

11 Q. 1A.

12 A. Yes, sir. When we could not get the broad
13 discovery that we requested, we narrowed the request to
14 specific law firms and specific cases on -- on the list
15 to try to -- to try to convince the Court to give us some
16 limited discovery to develop the arguments that we have
17 made in this case.

18 As you well know, we were happy to do a random
19 sample. We were happy to do extensive discovery to have
20 a broader list of those claims. So that's why it doesn't
21 surprise me that the RFA-1 list is that subset of the law
22 firms, because the discovery was taken against that
23 subset of the law firms.

24 Q. And on -- if we go back to your experience in the
25 tort system. Most of the claims, all but a few -- all, I

Cross - Magee

1 think, but two Torres and Treggett -- no, I overstate.
2 There are several cases on RFA list one, the 210, that
3 were tried, but almost all of them were settled, isn't
4 that so?

5 A. That's correct. Yes.

6 Q. And when Garlock settles, it stands down in
7 discovery in the tort system; correct?

8 A. When settlement is reached, everyone stands down.

9 Q. Plaintiff stands down too.

10 A. At least with respect to Garlock.

11 Q. One of Garlock's prime objectives in settling is
12 to cut off the expenses of proceeding with further
13 discovery in trial.

14 A. Absolutely. That's its primary desire in settling
15 is to cut off those further expenses as early as it can.

16 Q. I want to spend some time on some of those
17 settlements. There's been some talk of MEAs, Major
18 Project Expense Approval forms. You're familiar with
19 those forms?

20 A. Yes, I am.

21 Q. Those forms constitute, do they not, the official
22 written record of the -- of Garlock's decision with
23 respect to whether to settle and the amount to settle, as
24 far as its internal documents are concerned. I should
25 say Garrison.

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1 A. That's a summary -- they had some of that
2 information on there. I think I testified that the
3 purpose of that document was to provide the signatures of
4 the required approving parties so that the director of
5 finance who was responsible for paying those settlements
6 could look in the file, find that MEA and note those
7 signatures before she made those payments.

8 Q. There was a internal control purpose behind those
9 forms; correct?

10 A. Correct.

11 Q. They were business records; correct?

12 A. Yes.

13 Q. And there is no other or better documentary source
14 within Garrison to reflect its decision-making process
15 and the results of that process in particular cases that
16 were settled; correct?

17 A. That's true with respect to a very large
18 percentage of the cases, yes, sir. Mr. Swett, we talked
19 about how those decisions were reached and how those
20 resulted from communications and discussions and then,
21 ultimately, before they were paid, these forms were
22 filled out. That's correct.

23 Q. Mr. Walker, can you get me to GST-EST document,
24 let's go to -- I want to focus on the period 2004-2005
25 which you testified was a particularly difficult one for

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1 Garlock. And I'll ask Mr. Walker to pull up ACC-766.

2 This is an MEA form; correct?

3 A. Yes, it is.

4 Q. And if that's your signature there, Mr. Magee?

5 A. It is. The second signature is my signature.

6 Yes.

7 Q. And this places the document in March of '04?

8 A. That was the date of my signature. Yes.

9 Q. It says, "See attached for signature approval."

10 Is it your expectation Mr. Schaub signed this form on a
11 different page?

12 A. I can't tell you for sure. I would suspect that
13 Mr. Schaub probably signed the identical form but just in
14 a different -- on a different piece of paper, but I don't
15 know that. That's speculation.

16 Q. But you couldn't have gotten a \$10 million group
17 deal through without the signature of the CEO of EnPro;
18 correct?

19 A. Let's see. I believe Ms. Schwartz would have been
20 the director of finance at Garrison at the time. She
21 would not have cut those checks without having a piece of
22 paper that had Mr. Schaub's signature on there, that's
23 for sure.

24 Q. Let's go up to the top. First of all, we'll see
25 this deal covers 144 cases at \$69,000 and change. Do you

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1 see that for a total of \$10 million?

2 A. I do see that. Yes.

3 Q. That figure is well below Dr. Bates' threshold for
4 the amount of a settlement that implies any real
5 liability concern, isn't it?

6 A. It would certainly have -- paying that amount
7 would certainly have been far less than paying dollars to
8 defend those cases. Yes, sir.

9 Q. Let's go up to the top and see more about this
10 form. This is -- the project description says, "Northern
11 California." "Kazan," that's a reference to the Kazan
12 and McClain firm?

13 A. Yes, sir.

14 Q. And the write-up says this settlement involves 144
15 mesothelioma cases that were filed by the Kazan law firm
16 in Alameda County Superior Court, Oakland, California.
17 The negotiation has been going on for almost three years.
18 Let me stop there.

19 Do you expect that in a negotiation covering three
20 years the Garrison people would have developed adequate
21 information to decide on a rational basis whether or not
22 to settle disputed claims?

23 MR. CASSADA: Your Honor, I want to interpose an
24 objection. I believe we have a continuing objection.
25 This is a document that was produced over our objection

Cross - Magee

1 on the bases of a waiver ruling we objected to. So we
2 object to this document in any way whatsoever in this
3 court.

4 THE COURT: We'll overrule that objection.

5 MR. CASSADA: That objection will continue for any
6 and all MEAs?

7 THE COURT: Yes.

8 THE WITNESS: I'm sorry, Mr. Swett. If there was
9 a question, I can't remember what it was.

10 BY MR. SWETT:

11 Q. I think I asked whether or not it's your
12 expectation that over the course of a three-year
13 negotiation, the Garrison lawyers would have gathered
14 adequate information to decide whether or not on a
15 rational basis it would be prudent for Garrison to settle
16 these cases.

17 A. Certainly, they would have -- to have settled
18 these cases at that amount they would have developed,
19 whatever your words were, significant information --
20 sufficient information to make a determination about the
21 settlement. Whether that was information with respect to
22 all the cases or just a few of the cases or just one or
23 two of the cases sitting here, I don't know. That would
24 have been something that Mr. Glaspy would have been
25 involved in.

Cross - Magee

1 Q. The other signatory of this document is Paul
2 Grant; correct?

3 A. That's correct.

4 Q. You imposed trust and confidence in him?

5 A. Absolutely.

6 Q. And he says in this document, "The potential
7 verdict for these cases is over a billion dollars, as
8 Oakland is one of the most pro-plaintiff jurisdictions in
9 the country." Period. End of quote. Do you see that,
10 sir?

11 A. I do see that.

12 Q. That must have been a startling figure to you to
13 see that in this document, wasn't it?

14 A. Not in the context of the previous sentence.

15 Q. Well, in the previous sentence he's bragging that
16 this settlement level is \$69,000 and change per case
17 means that Garlock is paying the Kazan for less than any
18 other defendant in Oakland.

19 A. Obviously, the parties agreed that Garlock had
20 less responsibility or was less of a legitimate target
21 than all the other -- all the other defendants that
22 Mr. Kazan and Mr. McClain were suing in those cases.

23 Q. So you recognize the relationship between the
24 settlement amount and liability?

25 A. I recognize that despite that over a billion

Cross - Magee

1 dollars -- I think Mr. Grant would probably tell you he
2 was puffing there. But despite that, the Kazan firm was
3 willing to take amounts from Garlock far less, far less
4 than the amount that would have been required for Garlock
5 to defend and win the case, despite the fact that they
6 had Mr. Grant convinced that the potential verdict amount
7 for those cases -- if Garlock had had a chance to lose
8 those verdicts and share it with all these other
9 responsible parties, it would have been over a billion
10 dollars. Despite that, Garlock was able to pay only
11 \$70,000 per claimant.

12 Q. And you're inferring -- I've observed this. I
13 think you testified on direct with regard to some of the
14 cases settled back when you were paying \$1,500 or so to
15 some firms for mesos that that certainly implied zero
16 liability. That's your view; right?

17 A. My view is there would be zero liability. I think
18 everybody that would look at that and see what it would
19 have cost you to defend those cases would have concluded
20 that that settlement reflected an understanding by both
21 parties that this particular defendant had a very, very
22 small, if any, responsibility in the cases.

23 Q. But when it comes up to the level of \$200,000 or
24 so, you're not willing to concede that a settlement in
25 that amount bespeaks liability; are you?

Cross - Magee

1 A. Mr. Swett, I think what I've said is if all the
2 facts were available in those cases, then there would not
3 be liability. But I also said that an illusion of
4 liability, as I called it, real trial risk, very real
5 trial risks, were created in many of those cases.

6 Q. And you had in your projection, time and time
7 again, year in and year out, and your 10-Ks disclose that
8 there were plausible scenarios under which Garlock's
9 aggregate liability for pending and future asbestos
10 claims could be a billion dollars or more. Correct?

11 A. And we discussed at length what that meant.

12 Q. Here we have 144 cases which, regardless of
13 apportionment issues, which we'll get to, in the eyes of
14 Garrison's CEO in approval that you signed off on was
15 telling you that those cases could produce a verdict of a
16 billion dollars all by themselves.

17 A. In total against all defendants.

18 Q. I said we'll get to apportionment in a few
19 minutes.

20 He goes on to say -- just so that we don't get
21 hung up on a particular snippet out of this document, he
22 goes on to say the economic damage in these cases is over
23 \$135 million. Do you have the understanding that in
24 California a liable tort defendant is responsible for 100
25 percent of the economic damages, don't you?

Cross - Magee

1 A. Potentially, yes.

2 Q. And then he goes on to say all the cases have
3 sufficient Garlock product identification to defeat
4 summary judgment. So these are cases that could get to
5 trial; correct?

6 A. Potentially, yes.

7 Q. And he goes on to say, some of them, not all, and
8 I'm interposing some words here. But the sentence he
9 wrote is, some of them are bellringer Garlock cases, any
10 one of which would be a mega verdict if we lost. Do you
11 see that?

12 A. I see that. Yes.

13 Q. Did you share that view at the time you signed
14 this document?

15 A. The view that I shared at the time I signed this
16 document was the view that it made sense to pay this
17 amount on a per case average of \$70,000 to resolve this
18 group of cases.

19 Q. And he says, if we won 60 percent of these cases,
20 unlikely at best, in Oakland the verdicts we receive
21 would be extremely large and have a shattering effect.
22 Do you see that?

23 A. I do see that.

24 Q. So that -- he goes on to point out that you might
25 face a consolidated trial of all these cases. And that's

Cross - Magee

1 not a format you liked to go to trial in, is it?

2 A. I see that. And that's a correct conclusion about
3 consolidated trials. Yes.

4 Q. So as a risk manager of someone whose job it was
5 to limit Garlock's exposure to liability, you prudently
6 decided to spend \$10 million to resolve these 144
7 mesothelioma cases; right?

8 A. That was the decision that was made. Correct.
9 Obviously, the parties shared a view that those cases
10 weren't worth any kind of dollars like this against
11 Garlock or the party on the other side would not --
12 certainly not have accepted \$70,000 a case for them.

13 Q. Well I'll suggest to you that it's perfectly fine
14 to interpret numbers in the aggregate with those kinds of
15 inferences but that any given settlement is ambiguous.
16 That's what it means when Garlock enters into a
17 settlement and says, but we're denying liability and
18 therefore we are converting this tort suit into a
19 contract that we're willing to pay, and that's what it
20 means when a plaintiff says I think I can ring the bell
21 in this case but I'm going to take less money so as to
22 not go through that and so as to lock in a recovery for
23 my client.

24 You can't, by the number, infer anybody's
25 motivations in making this settlement beyond the fact

Cross - Magee

1 that there is risk and expense here and it's prudent to
2 resolve it, isn't that so?

3 A. There is certainly risk and expense, and it's
4 prudent to resolve it. I'll agree with that conclusion.

5 Q. Let's go to ACC-767. This is another MEA. This
6 one has to do also with the Kazan firm. It's a year and
7 a half or so later in August of 2005. Let's go down to
8 the bottom. Here we have signatures by Mr. Drake,
9 Mr. Grant, Mr. Magee and Mr. Schaub; correct?

10 A. That's correct.

11 Q. And we see that now we have 41 cases and there
12 they're resolving for \$170,000 and change each, for a
13 total of \$7 million or so on a per case average. The
14 Kazan firm is nudging up these values, isn't it?

15 A. I'd say they've done much more than nudge them up.

16 Q. Okay. So let's go to the top. It reads, this
17 settlement involves 38 mesothelioma cases and three other
18 cancer cases. That were filed by the Kazan law firm in
19 Alameda County Superior Court, Oakland, California. All
20 of the cases have sufficient Garlock identifications to
21 defeat summary judgment. Let's stop there. The Kazan
22 firm was not a firm that came to you to negotiate a peace
23 of your avoided costs in settlement or nuisance value,
24 was it?

25 A. I'm not sure what you mean.

Cross - Magee

1 Q. When they came to resolve cases, it was on the
2 merits in settlement negotiations lawyer to lawyer on the
3 basis of the facts, isn't that so?

4 A. And you're suggesting that the cost to defend that
5 had nothing to do with the settlements that were reached?

6 Q. I'm suggesting to you that you have sometimes
7 seemed to ascribe to plaintiffs in negotiations a
8 nuisance-value approach to value and this is nothing like
9 that, is it?

10 A. I can't ascribe to Mr. Kazan or whoever negotiated
11 this settlement or anything about that. They certainly
12 would have been aware of what it would have cost Garlock
13 to defend the cases.

14 Q. These cases had been ongoing for the last two
15 years, it says. And he makes this comment. This has to
16 do with characterizing a particular group here that's
17 being settled. He says the number of these cases are
18 extremely young mesothelioma plaintiffs in their 40- and
19 50-year-old range with exceptionally high economic
20 damages in excess of \$1 million each. Do you see that,
21 sir?

22 A. I do see that.

23 Q. And 40 and 50 years old is a very young age at
24 which to contract mesothelioma, is it not?

25 A. Very young. Yes.

Cross - Magee

1 Q. Apparently, these were high earners or people who
2 had high costs associated with their disease and that is
3 a significant component in compensable damages, isn't it?

4 A. Yes.

5 Q. So we go on and he says, even if there were no
6 economic damages in these cases, the collective potential
7 verdict for them is over a billion dollars, as Oakland is
8 one of the most pro-plaintiff jurisdictions in the
9 country and the Kazan firm is one of the most effective
10 asbestos plaintiff firms in the country. Do you see
11 that, sir?

12 A. Yeah. It looks like it might have been cut and
13 pasted from the last one we read.

14 Q. Well, no. That statement about the Kazan firm
15 isn't in the last one. You won't find it there. And
16 it's true, isn't it, Garlock regarded the Kazan firm as
17 one of the most capable asbestos plaintiff firms in the
18 United States?

19 A. Absolutely.

20 Q. And it was willing to pay value for that
21 reputation in an appropriate case.

22 A. It kind of puts in perspective the cases where
23 other plaintiffs' lawyers were extracting \$250,000 and
24 even more in cases. Yes, sir.

25 Q. Down at the bottom it says, for that reason if we

Cross - Magee

1 do not agree to settle these cases, which is clearly the
2 prudent and advisable thing to do based upon the merits
3 of these cases. Do you see that, sir?

4 A. I do see that.

5 Q. Was that a view you shared when you approved this
6 settlement?

7 A. Again, when I approved the settlement, I shared
8 the view that this deal made sense given the entire
9 details of the deal. Yes, sir.

10 Q. You didn't drill down into the particulars of the
11 individual cases in this group?

12 A. I'm sure we discussed the particular -- I can't
13 remember exactly the specifics of the discussion, but we
14 would certainly have discussed the specifics of these
15 cases and the specifics of this deal.

16 Q. You were managing from the top down. It wasn't
17 your job to get into the file and figure out the profile
18 of each case within this settlement group.

19 A. That's correct. I relied on my guys for that.

20 Q. And so your guys were telling you that the prudent
21 thing and advisable thing to do based on the merits and
22 the venue alone was to settle, and then goes on to point
23 to the risk of a consolidated trial in the very
24 short-term. Right?

25 A. It says all that. Yes.

Cross - Magee

1 Q. And it concludes, in turn, Garlock would most
2 probably be faced with a verdict exceeding a billion
3 dollars including a punitive damages finding. Do you see
4 that, sir?

5 A. I see that. Yes.

6 Q. So for the second time in a year and a half or so,
7 according to the people you relied on at Garrison,
8 Garlock is looking at the downside risk of a
9 billion-dollar verdict for a group of mesothelioma and
10 other cancer cases in Oakland. And that is a risk that
11 you faced year in and year out, isn't it?

12 A. I don't believe so. No, sir.

13 Q. Okay. And by the way, there is nothing in this
14 MEA, is there, about saving costs?

15 A. Mr. Swett, I think we talked about how that was
16 fundamental to what we were doing. You talked about what
17 we said in the 10-Ks. You talked -- I mean, there is
18 absolutely no question that what we were considering all
19 the time was the fact that we could do deals like this
20 and save costs.

21 Q. So it's just a happenstance that in these two
22 striking documents pointing to billion-dollar risks and
23 expounding the reasons to settlement, there just doesn't
24 happen to be any mention in here of the avoidable costs
25 to settling this case.

Cross - Magee

1 A. Well, you've obviously cherry-picked these. There
2 are references to avoidable costs in some of these. I
3 can't tell you why Mr. Grant chose to put what he chose
4 to put in one of these and why he wouldn't have talked
5 about avoidable costs. I can guarantee you that we were
6 aware of avoidable costs, considered avoidable costs, and
7 that avoidable costs were the principal reason we
8 resolved cases like this.

9 Q. You also considered, did you not, the prospects of
10 consolidated trials, large earning young mesothelioma
11 victims, very capable plaintiffs' attorneys and
12 billion-dollar verdict risks?

13 A. If you were to put Judge Posner's formula back up
14 on the screen, you would see why those are important
15 components. They're important components. Because if
16 there's liability, the amount and the share of the
17 verdicts is a very important part of the formula. But I
18 would submit to you that the avoidable cost box in that
19 formula alone would have justified these settlements.
20 All of this made it -- made it certainly advisable to do
21 the settlement in addition to that, and I would have
22 readily approved this settlement; there's no question
23 about that, and did.

24 Q. And somehow, sir, I doubt that back then in
25 2004-2005 when presented with this memo, you pulled out

Cross - Magee

1 of your drawer a copy of Professor Posner's, now Judge
2 Posner's, article to pull out the formula and to see how
3 you would calculate the numbers in that approach. That's
4 really not the way you did day-to-day risk management, is
5 it?

6 A. Mr. Swett, that formula comes about because of the
7 way people consider settlements. Nobody did the formula
8 and then said hey, you should use the formula to
9 determine how you make settlements. Somebody analyzed
10 the data, determined why settlements were done and said
11 this formula reflects what's going on. And it did
12 reflect what was going on.

13 Q. What was going on was the usual mix of
14 considerations that any lawyer in charge of litigation
15 has to think about when deciding whether it's a prudent
16 thing to do to pay money to resolve the case or to accept
17 money to resolve the case, or instead roll the dice with
18 the jury. Isn't that so?

19 A. That is a consideration. Absolutely.

20 Q. Okay.

21 A. I would submit to you that if Mr. Kazan thought he
22 could get a billion-dollar verdict against Garlock in
23 these cases, he would not have accepted \$170,000 in
24 settlement.

25 Q. Well you have no idea what he got from other

Cross - Magee

1 defendants.

2 A. I've got an idea based on this that he got more.

3 Q. But you don't have any particulars because
4 defendants keep their settlements confidential, don't
5 they?

6 A. Yes.

7 Q. Garlock always did that, didn't it?

8 A. It tried to. Yes. Often we learned that
9 plaintiffs' lawyers discuss those numbers, but we tried
10 to keep them confidential.

11 Q. Whereas, asbestos settlement trusts publish their
12 average values for settlement, don't they?

13 A. They do.

14 Q. So ever since there's been a publicly available
15 TDP on the docket of any bankruptcy court, you've had a
16 window into the resolution values of reorganized debtors
17 that you didn't have and never did have on the solvent
18 debtors. Isn't that so?

19 A. Yeah. If we knew who was collecting that money,
20 we would have a good source to determine how much they
21 were selecting. That's correct.

22 Q. And you had a window into what contributions,
23 based on commonsense assumptions, of where the guy worked
24 and what his trade was and who he would have claims
25 against, to the extent it was reorganized debtors who had

Cross - Magee

1 published TDPs out there. You had that window to look
2 through when figuring out what portion you ought to be
3 willing to pay, isn't that so?

4 A. It's really interesting to me that you suggest
5 that we had a window into what those trusts were doing.
6 That is an ultimate irony in this case.

7 Q. Well you had Mr. Cassada on the bankruptcy cases
8 from a very early date, didn't you?

9 A. We tried to. That's where we tried to -- there
10 was a sealed door there, a closed curtain; no information
11 available to us about who was making claims and who was
12 being paid claims.

13 Q. Did you ask your Robinson Bradshaw lawyers to tell
14 the defense team to pay attention to the TDPs and payment
15 schedules and -- in order to form approximate views of
16 what contributions could be expected from those sources?

17 MR. CASSADA: Your Honor, the question calls for
18 attorney-client communications and work product.

19 THE COURT: Well, overruled.

20 MR. SWETT: I'm sorry?

21 THE COURT: I'll overrule it. I'll let you
22 answer.

23 BY MR. SWETT:

24 Q. Did you do that?

25 A. We did. We had -- Mr. Grant and I definitely

Cross - Magee

1 advised our team that the bankruptcies were something we
2 should focus on. And we did have a meeting where -- with
3 our regional counsel where Mr. Cassada appeared to talk
4 about that.

5 Q. When was that?

6 A. I can't remember the date. I suspect it was
7 around 2007-2008.

8 THE COURT: Let's take a break until 11:30. I'll
9 ask you to do your best to get finished by lunchtime,
10 then we'll go on to something else.

11 MR. SWETT: Your Honor, if I may. Mr. Magee has
12 taken the stand three times. He's thrown up a lot of
13 generalizations and information and I, frankly, have a
14 lengthy cross.

15 THE COURT: All right. Well, we'll be on your
16 time after lunch.

17 MR. SWETT: Thank you.

18 (Off the record at 11:20 a.m.)

19 (On the record at 11:33 a.m.)

20 THE COURT: All right.

21 MR. SWETT: May we resume?

22 THE COURT: Yes.

23 BY MR. SWETT:

24 Q. Mr. Walker, ACC770, please.

25 Mr. Magee, this is another MEA. This one is dated

Cross - Magee

1 January 19 of 2005. So we're still in that period, but
2 we shifted -- we've come across the country now to
3 Virginia. This is the Patton Wornom and Hatten firm in
4 Newport News. You're familiar with that firm, aren't
5 you?

6 A. Yes, sir, I am.

7 Q. They've been in this asbestos litigation on the
8 plaintiff's side for a long, long time. Isn't that so?

9 A. I couldn't tell you about that, but I'm familiar
10 that they've been around for a while.

11 Q. And this is a deal for \$725,000 for three
12 claimants, B. Wayne Brown, Rudolph Harris and Lloyd
13 Wiggins, Sr. Isn't that so? Let's take -- expand it so
14 that he can read it. Three claims at \$725,000; right?

15 A. Yes, that appears to be the case. Correct.

16 Q. So on a per claimant basis, we're below the
17 \$250,000 threshold, aren't we? Because by my math, if we
18 divide 725 by three, we get to \$241,000 and change. Does
19 that look about right?

20 A. If you did that on average. I suspect there were
21 allocations to these cases that at least one and, maybe
22 two of them, would have been over that \$250,000 amount.
23 But that would be easy enough to check.

24 Q. In any case, we're just at the margin of what
25 Dr. Bates originally calculated as the break point

Cross - Magee

1 between cases that were merely cost avoidance settlements
2 and cases that implied some specter of liability; right?

3 A. His general conclusion about that. That's
4 correct.

5 Q. And we have here a pipefitter who worked at the
6 Newport News Naval Shipyard, a pipe coverer who worked at
7 the same site, and a plumber/pipefitter according to the
8 description. And assuming the accuracy of that
9 description, those are people who you would expect, based
10 upon experience and your knowledge of the work sites,
11 would quite probably have exposure to Garlock gaskets.
12 Correct?

13 A. That's right. And I suspect that the two
14 60-year-olds got significant parts of the allocation of
15 that \$725,000.

16 Q. Because the younger the victim is, the more
17 valuable the claim?

18 A. Yes. Because of the earnings power and the
19 economic damages, yes.

20 Q. And Brown and Harris were living, and Brown -- and
21 the 60-year-olds were fairly young; right?

22 A. Right. Those -- the profile of the Brown and
23 Harris case certainly would have created higher potential
24 damages in those two cases.

25 Q. And Garlock's particular fear in these cases

Cross - Magee

1 seemed to be that it was going to be isolated at trial
2 because there were no other viable defendants to sit with
3 it on the defendant's side of the courtroom. Right?

4 I'll call your attention to this statement in the
5 middle paragraph. "And while asbestos-containing
6 products manufactured by other companies also were
7 identified in these cases, specifically, and at the
8 Newport News Naval Shipyard, in general, many of those
9 companies are bankrupt and the others settled before
10 trial. This would have left Garlock alone at trial."
11 Do you see that?

12 A. I see that. And that would have been a very
13 important factor and very significant, particularly in
14 Newport News.

15 Q. Do you have the understanding, sir, that under
16 Virginia law, it's the solvent defendants in the
17 courtroom who bear the brunt of the insolvent defendant's
18 share?

19 A. My understanding at the time this was done was
20 that that was the case. Yes.

21 Q. Okay. And in the further paragraph below
22 concerning Rudolph Harris, the 80-year-old, this
23 statement appears: "With the exception of two other
24 gasket companies, all of the other companies'
25 asbestos-containing products to which Mr. Harris was

Cross - Magee

1 exposed, are bankrupt. As with Brown and Wiggins, there
2 would have been no other viable defendant to point to at
3 the time of trial." Do you see that, sir?

4 A. Yes. That would have been very important, and
5 particularly in that jurisdiction that would have
6 presented these cases as cases with trial risk.

7 Q. Now one of the other factors that are called out
8 in this memorandum are some features of the asbestos tort
9 liability law as applied in that state and that
10 jurisdiction; correct?

11 A. Well I think it's fair to say as applied by one --
12 by the particular judge who was sitting in Newport News.
13 My understanding is that that's not the law in the state
14 of Virginia, but it certainly was the law applied by that
15 judge in Newport News in cases involving asbestos. So
16 that's why that was a particularly dangerous jurisdiction
17 because of the judge's interpretation of the law.

18 Q. Let's go down another paragraph. The author of
19 this document goes on to say, "The lack of other viable
20 defendants at trial with Garlock makes these cases
21 especially dangerous in light of the current status of
22 the law in Newport News. Under recent lower court
23 rulings, gasket and packing companies like Garlock may,
24 as determined by a jury, have a duty to warn workers of
25 the hazards of working with or around thermal insulation

Cross - Magee

1 to which they were exposed in connection with gasket and
2 packing work. This in essence makes Garlock potentially
3 liable for a good deal of these plaintiffs' thermal
4 insulation exposure," and I'll stop there.

5 Was that your understanding of the situation when
6 you came to evaluate this recommendation?

7 A. As far as I know, this was the only court that
8 took that position in the country. That made it a very
9 dangerous court in a very dangerous potential risk --
10 real risk in these cases.

11 Now what I've come to understand is the recent
12 lower court ruling that's referencing here was in a paint
13 thinner case that involved a teenager drinking that paint
14 thinner, and somehow that was being applied by this judge
15 to asbestos cases. Certainly, that was what this judge's
16 interpretation was of the law. As I understand it,
17 that's no longer an interpretation being taken. But that
18 was the interpretation by this judge. And there's no
19 question, absolutely no question, that that made these
20 dangerous cases with real risks at trial.

21 Q. And that feature of diverse law, many
22 jurisdictions, the views of particular judges, the
23 doctrines of particular states, is an inescapable aspect
24 of the tort system out there, isn't it?

25 A. Certainly, that's an aspect of the tort system.

Cross - Magee

1 As I said, as far as I know, this is the only judge
2 anywhere that took this position. Again, we did not
3 believe it was the law of Virginia and we didn't believe
4 it would stick. But as we have demonstrated and shown,
5 to take a verdict and then try to appeal that verdict and
6 go through the high cost of that would have been not a
7 proposition that we would have enjoyed. And again, there
8 is no question that there's real risk of loss, given that
9 interpretation by this judge.

10 Q. Because that interpretation allowed for the
11 following charge to the jury which Garlock itself faced
12 in some cases. I'm going to read to you from a
13 transcript of the Michael Little case. That's a Garlock
14 case. It's Michael Little against Garlock. It's at law
15 37073V-04, Newport News, Virginia, October 1, 2004,
16 Honorable H. Vincent Conway, Jr., Chief Judge presiding
17 over a jury trial. And at page 16, he gave this charge:

18 "Normally, a manufacturer can anticipate that the
19 product it deals in will be used only for the
20 purposes for which it is manufactured and sold
21 and, thus, it is expected to reasonably foresee
22 only injuries arising in the course of such use.
23 However, it must also be expected to anticipate
24 the environment which is normal for the use of its
25 product."

Cross - Magee

1 Have you heard that charge before?

2 A. Absolutely. That's what Judge Conway, who you're
3 talking about, that's the charge he gave. That was his
4 interpretation of the law. It's the only place I know of
5 anywhere where Garlock could have been found responsible
6 for the dangerous thermal insulation exposure. And
7 absolutely, if Garlock can be responsible for that
8 thermal insulation exposure, Garlock faces significant
9 trial risks.

10 Q. Actually, what he's saying is Garlock can be
11 determined by a jury to have the duty to warn somebody
12 who's working with gaskets and insulation to avoid as
13 best they can the emissions from the insulation. That's
14 really the substance of the charge, isn't it, failure to
15 warn?

16 A. Mr. Swett, these cases were all -- these were
17 failure to warn cases across the country. That's what --
18 that's what Garlock's liability in almost all these
19 jurisdictions was about, an alleged failure to warn of
20 the dangers of its product. This is the only
21 jurisdiction I was aware of where any interpretation was
22 ever made that Garlock had a duty to warn about the
23 dangers of the thermal insulation products.

24 Q. Your point has been that gee, Garlock got sued
25 because its gaskets were there where all the insulation

Cross - Magee

1 was. Right?

2 A. Absolutely. And that's why this was a
3 jurisdiction that that particular judge where that was --
4 where that theory, which was the successful theory
5 everywhere else, would not work in that particular
6 courtroom with that particular judge. As I understand
7 it, that's not the position taken in that particular
8 courtroom anymore.

9 Q. Well let's listen to what Mr. Hatten, the
10 plaintiff's attorney, was able to argue on the strength
11 of that charge in the Little case. I'm at page 32, line
12 9. I'm sorry, line 5.

13 "The environment is submarines and ships because
14 these were sold to the Navy and to the government.
15 And on these, on these sheets, they have the style
16 numbers that are used for the Navy ships, these
17 gaskets they knew were going to be used with
18 pipe covering in the holds of ships, and that the
19 maintenance of the gasket required that they work
20 not just with the gasket but in the environment
21 where pipe covering was going to be used. And you
22 heard Mr. Maddox --"

23 Mr. Maddox is a Garlock expert, isn't he?

24 A. I can't recall. I'd have to check to see who
25 Mr. Maddox was.

Cross - Magee

1 Q. Okay. I'll continue. "And you heard Mr. Maddox
2 and the others say they had to take that pipe
3 covering off with their hands and with hammers and
4 so forth. Now that doesn't mean they're a pipe
5 covering manufacturer. What that means is they
6 know that when their gaskets have to be
7 changed, they simply have to tell the user, when
8 changing the gaskets, don't breathe asbestos dust.
9 Be careful about creating dust when you remove
10 gaskets, when you replace gaskets, when you scrape
11 them, when there's free asbestos fibers in the air
12 from taking the pipe covering off, from running a
13 grinder on it.
14 They didn't tell them anything, but they want you
15 to think that this is a case about a vacuum
16 chamber and not a submarine. And the judge has
17 told you, and you can read it, they have a duty to
18 know the environment where these are going to be
19 used and to warn about the dangers in that
20 environment."

21 Now I ask you this: Don't you think that in any
22 case, let's take a case out of Newport News to some other
23 jurisdiction that doesn't give that particular charge.
24 Don't you feel like the environment in which the gaskets
25 are used with foreseeable exposures not only to the

Cross - Magee

1 gasket emissions, but having those emissions contributory
2 to the other emissions, the emissions coming from the
3 insulation, are present in the minds of the jurors when
4 they evaluate the case?

5 A. As far as I know, and I'm confident in this,
6 Mr. Swett, that is not the law in any other court in the
7 United States.

8 Q. Now, the Fowers case is one of those cases that
9 was a trial resulted in a big verdict. And the further
10 development in that wake was the making of a large group
11 deal with the plaintiff's law firm; correct?

12 A. Correct. Fowers was another big driver case, a
13 driver case for the Baron & Budd firm, its deals, and it
14 would rival in lots of respects the Treggett case in
15 being a driver case that resulted not only in the
16 settlement of that case but in the settlement of lots of
17 other cases at higher values than they might otherwise
18 have settled at.

19 Q. And here we have ACC-324, please. I'm sorry.
20 Wrong number. ACC-327. This is May 5. We're still in
21 that difficult period, and the law firm is Baron & Budd.
22 The lead plaintiff, David Fowers and Daryl Root. It goes
23 on to explain this settlement agreement consists of
24 trial-listed mesothelioma cases set in 200 with Baron &
25 Budd. Fowers is to receive \$7.75 million, Root \$1.125

Cross - Magee

1 million, and the remaining meso cases are to be paid at
2 \$60,000 each. Fowers is a resolution of a \$10.3 million
3 verdict in California. Did I read that correctly?

4 A. You did.

5 Q. You and Mr. Grant and Mr. Hennessy and
6 Mr. Schaub all signed off on this deal, if we can see the
7 signatures.

8 A. I'm sure we did. Yes.

9 Q. Okay. And the value of the deal, or the breakdown
10 of the deal in the middle field of the document, says
11 total payout: \$15 million, 102 claims, 147,058 each.
12 Right?

13 A. Right. But as you know, that's not the
14 allocations that were -- that's the average. But you saw
15 the huge allocations on the two driver cases up in the
16 text.

17 Q. For some reason the author of this document,
18 presumably Mr. Hennessy, right?

19 A. That's correct.

20 Q. Wanted to display the effect of spreading those
21 \$15 million over all of the cases that were going to be
22 laid to rest under this deal.

23 A. Right. Which would have implied a very low
24 average for the rest of those cases and, I think, was in
25 the text. Didn't he say --

Cross - Magee

1 Q. Sixty each except for the two called out
2 specially?

3 A. Yes, sir.

4 Q. \$60,000 is way below Dr. Bates' -- even his
5 reduced \$200,000 threshold of a settlement that implies
6 serious liability versus one that's just about avoiding
7 the cost of the case. Right?

8 A. Yes, sir. I would say \$60,000 would be a number
9 that would imply to anyone that the case was settled
10 primarily for cost avoidance reasons.

11 Q. None of those cases settled for \$60,000 had to go
12 through a trial; right?

13 A. That's my understanding. Yes.

14 Q. And none of them had to do the full discovery
15 work-up that they would have done with Garlock had they
16 been destined for trial. Right?

17 A. Again, we'd have to look at each of the cases to
18 know at what stage those cases were when they were
19 included. I suspect that those cases included cases at
20 various stages of readiness for trial and preparation.
21 But no question there would have been a lot of cases in
22 that deal where Garlock would have been willing to pay
23 \$60,000 to avoid the cost of working the case up.
24 Absolutely.

25 Q. Part of the impetus for that was that Baron & Budd

Cross - Magee

1 showed what it could do in the Fowers case by persuading
2 the jury to award a single victim more than \$10 million.

3 A. Yes. The Fowers case was a strange and unusual
4 case, but that happened there.

5 Q. Let's turn to ACC-737. Now, you may have noticed
6 on the page we were just looking at, the MEA, there was a
7 little note at the bottom: "Ernie, see attached." And
8 then there are your initials; right?

9 A. Yes.

10 Q. So you attached this memorandum?

11 A. I did.

12 Q. This was a memorandum to you and to Mr. Schaub,
13 the CEO of EnPro, from Mr. Grant, Mr. Hennessy.
14 "Settlement of Baron & Budd and Silber Pearlman." Silber
15 and Pearlman was a law firm associated with Baron & Budd,
16 wasn't it?

17 A. Well, Silber Pearlman was the law firm that Steven
18 Baron had been with before he and Baron -- he and Russell
19 Budd decided to merge their firms. So I'm not sure if
20 this is pre-merger or post-merger, but Silber Pearlman
21 had been Steven Baron's firm. So not only were they
22 associated, they became one and the same firm at some
23 point.

24 Q. Let's go to the middle paragraph. First of all --
25 I'm sorry. Let's look at the dimensions of this group.

Cross - Magee

1 First paragraph. This group consists of 2,690
2 Baron & Budd cases and its affiliated counsel; Silber
3 Pearlman with 1,568 cases. I take it this must have been
4 a deal covering all disease types.

5 A. Yes, sir. Silber Pearlman was primarily a
6 nonmalignant shop, and Baron & Budd had lots of
7 nonmalignancies too.

8 Q. In the recent past, Baron & Budd has come to focus
9 on mesothelioma claims like any other firms; right?

10 A. Right. Because the nonmalignant claims can't get
11 trials and didn't produce trials.

12 Q. And if we go down further in the document, the
13 driving force in this settlement is the Fowers case,
14 82-year-old living mesothelioma plaintiff from
15 California. Settlement on Fowers case is in full
16 settlement of \$10.3 million compensatory damage award
17 entered against Garlock in Los Angeles, California. It
18 goes on to say it releases the potential wrongful death
19 claim which Mr. Fowers would have against Garlock. Do
20 you see that, sir?

21 A. I do see that.

22 Q. So as a general matter in the tort system a living
23 mesothelioma victim has his personal injury tort claim
24 and his heirs, when he dies, have a separate wrongful
25 death claim that unless specifically released in the

Cross - Magee

1 resolution of the tort claim, remains viable and can be
2 prosecuted against Garlock after his death; isn't that
3 so?

4 A. That's true in some states that are known as
5 two-disease state versus one disease state; that's
6 correct.

7 Q. Well, one disease is asbestosis followed by
8 mesothelioma. This is two cases of action. The victim's
9 personal tort claim and the separate claim for different
10 damages of the wife and the children. Correct?

11 A. Correct. And that's why those claims would always
12 be resolved in the settlements. Obviously, Garlock would
13 not resolve the personal injury claim without also
14 resolving the wrongful death claim.

15 Q. That's what they did here with regard to
16 Mr. Fowers. And then the document goes on to say the
17 determination was made by the Garlock trial team -- do
18 you remember who the trial team was?

19 A. There were a lot -- there were a lot of different
20 lawyers involved in different parts of the Fowers case.
21 I know that Mr. Harris and Mr. Schachter, perhaps, and
22 Mr. Glaspy would have had some participation in there.
23 It may have been that Mr. Baronian, who was local counsel
24 in Los Angeles, would have had the primary role. I can't
25 remember, sitting here.

Cross - Magee

1 Q. At any rate, the determination was made by the
2 Garlock trial team, the Garrison litigation management
3 and senior management, and that's a reference to you and
4 Mr. Schaub, wouldn't it?

5 A. That would have been what that reference was to.
6 Yes.

7 Q. It would have been more sensible to take out the
8 remainder of the inventory rather than risk the likely
9 assessment of punitive damages in this case. That was
10 your conclusion at the time?

11 A. It was. Given what had happened in that case, we
12 were concerned that had it continued on to the punitive
13 damage phase, that there would have been -- there could
14 have been a punitive damage award.

15 Q. You were confronted with the prospect of a very,
16 very costly superseded bond and having to fund it with
17 cash collateral as you described the other day?

18 A. Right. And you need to understand the context of
19 that. This was, I believe, three months -- a mere three
20 months after the Treggett decision, when we had just had
21 to post a bond and put cash collateral of about \$35
22 million on the side to secure that bond. So that was a
23 very large concern.

24 Q. Fowers was also a California case?

25 A. It was also Los Angeles.

Cross - Magee

1 Q. Even though Baron & Budd was a Texas law firm by
2 legacy?

3 A. That's correct.

4 Q. And the same bonding rules would have applied here
5 as in Treggett?

6 A. Absolutely. So that would have been a big
7 concern.

8 Q. You were facing a potentially crushing financial
9 obligation.

10 A. To have had to set aside that kind of money again
11 while the first part was set aside; to have to put cash
12 collateral aside to secure a similar bond would have been
13 crushing. That's correct.

14 Q. And you had post-trial juror interviews. And they
15 had indicated that a punitive damage award of \$10 to \$50
16 million was a real prospect; right?

17 A. That's correct. One of those jurors who was
18 interviewed was Anthony Quinn's son, who was screenwriter
19 in Hollywood. And he wanted to do a movie about the
20 trial. He told our folks that Garlock had won the
21 science but lost the show. And then when asked whether
22 he voted for the science or the show, he said he voted
23 for the show. Obviously, Mr. Nemeroff in this case had
24 put on quite a show and it had resulted -- it had
25 resulted in this result.

Cross - Magee

1 Q. Well that's an interesting point, because Garlock
2 attempted in the Fowers case to apportion liability to
3 others?

4 A. It did. Yes.

5 Q. And it was faced with the necessity under
6 California law of actually proving the cause of action
7 and all of its elements against those other parties to
8 whom it wished to attribute liability?

9 A. That's correct in part, Mr. Swett. If Garlock was
10 found liable, then it would have had to have demonstrated
11 that and it was found liable. But Garlock's first role
12 in these trials was to demonstrate that it had no
13 liability as we talked about before. And if it could
14 demonstrate that, then there was no need to do what
15 you've just described.

16 Q. And the plaintiff's burden was to establish by
17 evidence all of the elements of the plaintiff's cause of
18 action against Garlock?

19 A. That's correct.

20 Q. And Garlock's burden when apportioned was
21 attempted to negate the plaintiff's showing of, for
22 example, causation or duty or any of the other elements
23 of the tort; correct?

24 A. That's correct. That's how the -- that's how it
25 would have gone. Yes, sir.

Cross - Magee

1 Q. And yet if Garlock wanted to, having taken a hit
2 from the jury, shift the burden of that to others in
3 whole or in part, Garlock would have to have to undertake
4 the burden of making out every element of the cause of
5 action on the evidence against those third persons;
6 correct?

7 A. Which we believed that it had done in this case.
8 Yes.

9 Q. And indeed, Garlock would be held to the burden of
10 giving the jury some rational basis to quantify the
11 amount of -- or the percentage, the share that should be
12 attributed to any of those third persons if there were
13 more than one that Garlock was shooting at; right?

14 A. That's correct.

15 Q. And there was a jury interview. And the jury let
16 it be known, did it not, that while they were impressed
17 by the evidence of the insulation, they did not believe
18 that Garlock had met the foreseeability. I'm sorry, that
19 they thought that Garlock's defense fell down on the
20 issue of the foreseeability of the harm; isn't that
21 right?

22 A. You need to choose your words very carefully on
23 describing that.

24 Q. You and I both need to do that, and I'm certain
25 you are. Because what the jury concluded was -- well,

Cross - Magee

1 let's tell a little bit of the story.

2 A. Sure.

3 Q. This man was present at Pearl Harbor.

4 A. He was. Well, he was present in the post-Pearl
5 Harbor.

6 Q. In the cleanup of the wreckage of the Japanese
7 bombing of Pearl Harbor?

8 A. Yes, sir.

9 Q. He was on bombed-out ships cleaning them out?

10 A. Yes. Right. And I think it may have been the USS
11 Arizona where he was cleaning them out and would come up
12 just covered in insulation, and that was the testimony.

13 Q. And he was swimming through the fetid water full,
14 as it was, of dead bodies and insulation. Right?

15 A. That's correct. And he would come up hauling
16 insulation with him.

17 Q. And all of that he fully admitted.

18 A. That's correct.

19 Q. Yeah. And the jury -- that must have been, don't
20 you think, a difficult witness to cross-examine?

21 A. Oh, it was a very difficult witness. Because what
22 had happened in that case is Mr. Fowers had -- when he
23 filed the lawsuit, he was very, very ill and was expected
24 not to have lived long and he was in very much pain
25 during his deposition. His mesothelioma, if it were

Cross - Magee

1 mesothelioma, had gone into remission prior to trial, and
2 he was fairly healthy at trial.

3 And when he was at trial, he was minimizing a lot
4 of that insulation exposure and saying he didn't have any
5 insulation exposure, for instance, in a later -- in later
6 service with the Coast Guard insulation exposure. And he
7 said that he had been delirious and sick when he had said
8 that.

9 And in fact, Mr. Nemeroff very effectively played
10 the deposition in front of the jury when he was very sick
11 and made the point that Garlock was trying to impeach
12 what he was saying at trial with what he had said at that
13 deposition when he was very sick, was delirious, and
14 nothing could -- nothing could be believed from what he
15 said then, so -- and took Garlock to task for trying to
16 impeach him with that testimony, which just demonstrates,
17 Mr. Swett, how difficult it is for Garlock if the
18 claimant at the case at the trial is not acknowledging
19 these exposures.

20 In that particular case it was a really
21 interesting case because he said his only exposure was
22 the exposure when he dragged up that insulation from the
23 USS Arizona and other ships. And then in the
24 deliberations, the jury determined that because the
25 surprise attack -- because the attack on Pearl Harbor was

Cross - Magee

1 a surprise, because it was a surprise, then the
2 insulation companies couldn't have foreseen that he would
3 have had to have removed that insulation and, therefore,
4 that they couldn't hold the insulation companies
5 responsible for the damage for their products because it
6 was non-foreseeable that Pearl Harbor would happen. That
7 was sort of a bizarre jury deliberation.

8 Q. A bizarre jury deliberation involving a very
9 sympathetic plaintiff with a strong story about his
10 exposures where you were easily able to demonstrate and
11 you did, in fact, according to the interviews demonstrate
12 to the satisfaction of the jury that he had all kinds of
13 insulation exposure. And the jury still found for him?

14 A. Absolutely not. There's where I disagree with
15 you, Mr. Swett. We were able to demonstrate and he was
16 able to acknowledge all kinds of insulation exposure from
17 that experience in three months doing that work. He did
18 not acknowledge the later exposure to insulation where
19 there wouldn't have been this explanation that it was not
20 foreseeable and where the insulation companies would have
21 been responsible for the later very foreseeable exposure
22 to insulation. That was not acknowledged at trial.

23 Q. Are you telling me, sir, that he did not
24 acknowledge at trial having had exposure to insulation on
25 boilers and pipe covering?

Cross - Magee

1 A. I'm telling you that there when are specific --
2 specific insulation exposures that were the subject of
3 later trust claims during, I believe, his work with the
4 Coast Guard with specific products in those environments,
5 that he did not acknowledge at trial. He may have
6 acknowledged general insulation exposure or the fact that
7 there were insulation on those products, I mean on those
8 products you described, but he did not identify the same
9 defendants, the same bankrupt defendants, that he later
10 filed trust claims against.

11 Q. Are you telling me that he did not testify to
12 using asbestos-containing Sheetrock at Treasure Island, a
13 naval base?

14 A. I'm talking about -- I believe it was his Coast
15 Guard service that occurred later.

16 Q. He testified, did he not, to other exposures to
17 insulation on the USS Sperry --

18 A. I don't believe --

19 Q. -- at trial?

20 A. He did not identify the insulation company or the
21 products.

22 Q. Now let's picture the man swimming in the water in
23 the bombed-out ships hauling out the insulation. Is it
24 your understanding that he should have been able to say
25 whose insulation that was, based upon his personal

Cross - Magee

1 knowledge and recollection?

2 A. Well, first of all -- first of all, that's not
3 what we're talking about. We've already talked about
4 that. Those are not the same exposures that we're
5 talking about here. Those are the exposures that he did
6 readily acknowledge. And, no, certainly you wouldn't
7 have expected him to know the insulation manufacturer for
8 the companies when he was hauling them up off the bottom
9 of the sea. But he -- if he worked where insulation was
10 being installed, he would have known in some
11 circumstances the name of the insulation manufacturer.
12 And his lawyers certainly figured out the names of those
13 insulation manufacturers in connection with making trust
14 claims.

15 Q. Have you ever seen those claims?

16 A. Yes, sir, I've seen some of those claims.

17 Q. Okay. Let's read what he said at trial at GST- --
18 this is the Fowers' trial transcript GST-6219. It's a
19 GST Exhibit 6219. This is a transcript of the trial.
20 That's Nemeroff, he's the plaintiff's lawyer you
21 mentioned. Right? This is a GST Exhibit 6219, and I'd
22 like to go to page 65 at line 16. That's not the right
23 reference. Let's go to page 36.

24 A. I see at the top of that page you've got up there
25 where he's asking the names of the pipe covering.

Cross - Magee

1 Q. Thank you.

2 A. And he's saying he doesn't remember.

3 Q. Right. He doesn't know the brand names. And you
4 don't find that surprising?

5 A. Well, again, I'm not sure which -- it depends on
6 what the -- if we're talking about when he was
7 overhauling and removing ships from the bottom of Pearl
8 Harbor, I certainly wouldn't have expected that. I don't
9 know that that's the particular exposures we're talking
10 about there.

11 Q. Let's go to page 63, line 12 please. This is
12 testimony about sleeping conditions on the Sperry;
13 correct? Are you aware that Mr. Fowers testified that as
14 he was sleeping in his bunk, he was being rained down on
15 by insulation? Had you heard that before, sir?

16 A. I've certainly heard that before. I don't
17 remember if I heard that in this particular case. I'd be
18 happy to read all this.

19 Q. I'm having trouble getting us to the right place.
20 I'll have to come back to it, I apologize. But it's not
21 news to you that this fellow testified to a variety of
22 exposures to a variety of products under very different
23 circumstances; correct?

24 A. And Garlock was diligently trying to figure out
25 who was responsible for those exposures. Yes, sir.

Cross - Magee

1 Q. Let's come back to the MEA. I'm sorry, to your
2 memorandum justifying the settlement with Baron & Budd,
3 ACC-737. Down at the second to last paragraph, this
4 gives the magnitude of the deal. Approximately
5 \$41,753,500 for 4,258 cases, or \$9,805 a case. Are you
6 seriously suggesting, Mr. Magee, that Garlock decided to
7 settle 4,258 cases because Mr. Fowers had been a
8 difficult witness at trial?

9 A. No, sir, I'm not suggesting that at all. I'm
10 suggesting that this settlement, the amount of this
11 settlement, those averages and the other amounts were
12 driven because of leverage exerted as a result of that
13 Fowers verdict. In fact, we were in the middle of that
14 trial and at that -- that was the perfect timing for
15 Baron & Budd to use that case, to use the bonding
16 facilities, to use the driver case to drive up the
17 settlement. There's no dispute that these cases would
18 have been discussed for settlement. The dispute is what
19 those settlement amounts would have been.

20 Q. Let's go to the second page to see how the deal
21 was supposed to work. Up top there it says the parties
22 anticipate that by entering into this agreement, there
23 will be no further trials in the period in which this
24 deal will be administratively processed from 2005 to
25 2007. So this was a three-year "peace treaty" with Baron

Cross - Magee

1 & Budd that was supposed to dispense with the trials
2 during that period. Correct?

3 A. It was supposed to, that's correct, but it did
4 not.

5 Q. And down below in the same paragraph, it says it
6 is anticipated that the 2005 cases, and I take it was a
7 reference to the year and not the number of cases, will
8 consist of Root and Fowers and an additional hundred
9 mesothelioma cases which will be selected by Garlock from
10 the submitted claims from Baron & Budd. Do you see Baron
11 & Budd? Do you see that?

12 A. I see that. That's very interesting language. I
13 don't understand what that was about or why it was that
14 way, but I do see that.

15 Q. Don't you think what it means is Garlock was given
16 its choice of which cases to put at the front end of the
17 queue of this settlement processing agreement to make
18 sure that it was able to cherry-pick what it considered
19 to be the hundred most dangerous cases among the Baron &
20 Budd inventory and extinguish them first?

21 A. I don't really understand why that would have
22 mattered in the context of this deal.

23 Q. And it goes on to say that Garrison will give
24 priority to the resolution to the remaining mesothelioma
25 cases in California and select the most dangerous

Cross - Magee

1 jurisdictions in determining its selection of the
2 remaining cases. Do you see that, sir?

3 A. Yes. Certainly, I guess that would have implied
4 to me that Garlock would have been able to select what it
5 determined to be the most dangerous of these cases to
6 apply to this -- to this deal first.

7 Q. And in none of those cases there would be
8 discovery or trial.

9 A. Well in some of those cases, I suspect there
10 already had been discovery. The idea was that there
11 would not have been trial. Unfortunately, this deal had
12 an opt-out clause in it, and Baron & Budd took advantage
13 of that opt-out clause. And when it could find a case
14 where it could target Garlock, it targeted Garlock to try
15 to drive up settlement values.

16 Q. By the way, it was sometimes the case where
17 Garlock had an opt-out in a group deal covering a span of
18 time?

19 A. Certainly. But that opt-out would have been
20 something else for Garlock. It was an opt-out based on
21 whether or not there was exposure to Garlock. In other
22 words, Garlock could say no, that case is not going to be
23 paid because there was no exposure to Garlock. That was
24 my understanding of Garlock's opt-out rights. But
25 certainly, it would have had the right to say no, that

Cross - Magee

1 case doesn't qualify under this deal.

2 Q. And indeed, in this particular deal, as we see
3 from the second to the last paragraph, settlement on all
4 the cases is conditioned upon compliance with Garlock's
5 normal settlement criteria. Do you see that, sir?

6 A. That's exactly what I was just referring to. Yes.

7 Q. Okay. I want to talk to you about the Phillips
8 case.

9 A. In the last sentence there, it does point that
10 out, too, that we would have expected it would have
11 resulted in rejection of approximately 20 percent of
12 those claims where those conditions could not have been
13 met.

14 Q. Garlock was held to -- I'm sorry. Baron & Budd
15 was held to those usual and ordinary Garlock settlement
16 conditions even within the framework of this three-year,
17 very large group deal; right?

18 A. They would have held Baron & Budd to the
19 conditions spelled out in this settlement agreement about
20 what Baron & Budd would have had to present to be paid on
21 those claims. As you said earlier, there were
22 nonmalignant claims in this case deal and they would have
23 had specific requirements about demonstration of
24 impairment. And then, obviously, all the claims would
25 have had conditions about Garlock exposure and a disease

Cross - Magee

1 diagnosis to be paid under the regime in the deal for
2 that disease.

3 Q. Let me ask you this: Going into the Fowers case,
4 did you recognize that that case, of all the other cases
5 looming around then, was going to be one that would ring
6 the bell?

7 A. Did I personally? No, I did not.

8 Q. How about Treggett? When you were starting the
9 Treggett trial, making the decision whether or not to
10 accept the settlement demands that Mr. Iola made, were
11 you cognizant that the consequence of failing to take
12 that offer would be a \$22 million judgment?

13 A. I would never have thought that. In fact,
14 Treggett was exactly what we -- Treggett was an opt-out
15 case where Mr. Treggett apparently did not accept the
16 deal that was in place with that firm, and then it went
17 to trial. And no, I would never have thought that would
18 have been the result in any of these trials.

19 Q. I'm going to suggest to you that you're mistaken
20 in that assumption that indeed the Treggett case, like
21 the Fowers case, led to a deal. But we'll see whether
22 your recollection is correct or whether mine is. My
23 point now is that --

24 A. I'm sorry. I'm not --

25 Q. Treggett was a Waters & Kraus case?

Cross - Magee

1 A. Yes, sir. You must have misunderstood my
2 response. I didn't say it led to a deal. It certainly
3 led to a lot of higher payments going forward, but I said
4 there was a deal that it was an opt-out. That was -- I
5 believe that was what my testimony was.

6 Q. That's what I understood you to say. And I may
7 have missed something, but I'm not aware there was a deal
8 in place with Waters & Kraus before then?

9 A. Well whether there was a written deal or an oral
10 deal, my understanding -- and I guess I could be wrong,
11 but my understanding from what I've been told was that
12 that case was opted out from a larger settlement that had
13 been agreed to because Mr. Treggett would not accept the
14 amount allocated under the --

15 Q. Do you recall as you sit here that in the deal
16 that emerged under Waters & Kraus, in the wake of the
17 Treggett case, Garlock had an opt-out; right? Not just
18 the right to reject the evidence, but the right to walk
19 away from the deal because it didn't want to pay the
20 designated average under the structure of that deal for a
21 given case?

22 A. If it had that right -- I assume it must have
23 since you're saying it. If it had that right, I can't
24 imagine why it would have exercised that right except in
25 the case where the exposure evidence couldn't be

Cross - Magee

1 provided.

2 Q. Mr. Walker, do you have the clip from Mr. Magee's
3 deposition concerning the Waters & Kraus deal?

4 (Video begins playing at 12:14 p.m.)

5 (Video stops playing at 12:18 p.m.)

6 BY MR. SWETT:

7 Q. Okay. I'm sorry for the raggedness of that clip.
8 But that was your testimony concerning the mutual opt-out
9 nature of the Waters & Kraus deal that came after
10 Treggett; right?

11 A. Yes.

12 Q. And that was an arrangement under which if Garlock
13 didn't like the price at which the case was being
14 tendered within the structure of the deal, Garlock could
15 opt out and decline to pay.

16 A. Yeah, I believe that was the case. I know that
17 only the cases that Garlock rejected for settlement would
18 have been ones -- one where there was no Garlock
19 identification.

20 Q. But it had that right.

21 A. I believe that's the case, but Mr. Glaspy could
22 tell you for sure whether it had that right or not. I
23 believe I said in there that I believe that was the case,
24 and I still believed that was the case. I don't have the
25 document in front of me. I can't tell you for sure it

Cross - Magee

1 was the case, but that is what I believe to be the case.

2 Yes, sir.

3 Q. And let's -- you testified in what we just heard
4 that -- this is my words, not yours -- that the principal
5 attraction of the deal from Garlock's standpoint was the
6 opportunity to save the cost of defending cases against
7 the very effective and thorough plaintiff's law firm,
8 Waters & Kraus. Correct?

9 A. Those are your words. I believe I said very
10 thorough law firm that had demonstrated it was willing to
11 take cases to trial.

12 Q. Right. Let's go to ACC-339. This is the MEA for
13 a settlement agreement being reached with Waters & Kraus
14 in or about July 18, 2006. It describes itself as
15 containing within this deal -- the first line there is
16 the inventory of 2006 trial-listed cases, Waters & Kraus
17 trial-listed cases, for a total of \$6,710,000 lung
18 cancers case; 14 deceased mesothelioma case; seven living
19 mesothelioma cases; and two dismissals, which is just the
20 first part of a three-year settlement agreement.

21 This settlement also includes the Treggett verdict
22 payment of the compensatory damages, plus interest, for a
23 total of \$9 million. Have I read it correctly so far,
24 sir?

25 A. You have.

Cross - Magee

1 Q. And does that square with your recollection of the
2 nature of this deal?

3 A. It does.

4 Q. And then we go on with the document saying this
5 deal has caps built in of \$300,000 per year per
6 mesothelioma case average. Let's stop there. Can you
7 explain what that means?

8 A. I believe what that meant was that, again,
9 Mr. Glaspy and Mr. Iola would sit down and negotiate the
10 settlement amounts for each claimant in the group and
11 that the average of those settlements could not exceed
12 \$300,000 in any year.

13 Q. The cases were going to be individually negotiated
14 but within a capped obligation?

15 A. That's correct.

16 Q. And there was a separate capped price for the lung
17 cancers because the diseases command different values;
18 correct?

19 A. There was definitely a different case average.
20 You know, again we could quibble over why there would be
21 a different case average.

22 Q. And then if we go down further, please.

23 A. It was our contention, as you know, that Garlock
24 didn't have any responsibility in any of those cases, but
25 particularly in cases involving high-dose exposures like

Cross - Magee

1 a lung cancer case.

2 Q. Because mesothelioma is a disease for which the
3 plaintiffs can credibly contend low doses can account for
4 the illness. There's a difference between mesothelioma
5 and lung cancer in asbestos for a tort suit from the
6 standpoint of the defendant's liability exposure, isn't
7 that so?

8 A. That's your interpretation. My testimony was that
9 lung cancer cases required significant heavy doses of
10 fiber.

11 Q. And you are aware of the days spent in this
12 courtroom debating the question of whether comparatively
13 low doses of exposure to asbestos can create
14 mesothelioma; right?

15 A. I'm certainly aware of the testimony. It
16 happened over however many days it was here. Yes.

17 Q. Now let's focus on the last sentence here at the
18 tail end. It's referring to the three-year term of this
19 arrangement, and it's pointing to significant defense
20 cost savings. Do you see that?

21 A. Yes, I see that.

22 Q. The last sentence. But in the lead-in of that
23 same sentence, it says, "We feel this is a significant
24 savings over what we would have anticipated the cases
25 would have been over the next three years, as well as the

Cross - Magee

1 significant defense cost savings." Do you see that?

2 A. I see that.

3 Q. So that sentence is telling us, isn't it, that
4 Garlock was enjoying a savings by having these cases at
5 fixed amounts instead of waiting to see what liability
6 would attach in dollars to those cases if it didn't
7 settle them. Correct?

8 A. I couldn't tell you exactly what Mr. Drake meant
9 when he wrote that sentence.

10 Q. There was a risk management impetus from Garlock's
11 point of view to this deal?

12 A. Absolutely. Absolutely, Mr. Swett. We just
13 talked about how the Treggett case had been -- had
14 presented risks because of the way it put -- Waters &
15 Kraus had demonstrated. And I believe what we have shown
16 here demonstrates that what they would have done to
17 target Garlock with the exclusion of insulation company
18 evidence that would have created risk in whatever they
19 had chosen, whichever of these they had chosen to make
20 target cases and to present that profile. There is no
21 argument that they were able to present risk in a case
22 that presented trial risk to us.

23 Q. Rather than work through the discovery and defend
24 on the merits, Garlock found it prudent to pay money to
25 extinguish those claims?

Cross - Magee

1 A. Yes. The money that did have -- on average for
2 those cases would have been significantly less than what
3 it would have cost Garlock even if it had successfully
4 defended and won every single one of those cases.

5 Q. And there is a distinction between the significant
6 defense cost savings and what the author of this
7 document, Mr. Drake, is characterizing as what the
8 savings on what the cases would have been over three
9 years. Right?

10 A. I'm not sure what Mr. Drake would say about that.
11 What I interpret that to mean is that there would have
12 been targeted cases coming out of this group, just like
13 Treggett, where the evidence would have been portrayed
14 that way to present trial risks and that, therefore, not
15 only was -- were we saving the trial costs, which would
16 have been very important to us in the savings, but we
17 would have been eliminating trial risk in cases where
18 they would have been presented with trial risk in them.
19 Yes, sir, that's how I would have interpreted that.

20 Q. And, of course, we see no complaint in this
21 document about any unfairness in the way the Treggett
22 case was litigated, do we?

23 A. I don't know if it's in this document or not. I
24 can't tell you how many discussions we would have had
25 about the Treggett case.

Cross - Magee

1 Q. I didn't ask about discussions. When it came to
2 memorializing the basis for this three-year deal costing
3 about a million dollars a year, nobody made any
4 memorandum of the fact that Garlock was knuckling under
5 duress here because of the unfair --

6 A. If you think the only discussions, the only thing
7 that would ever happen to memorialize in my mind or
8 anywhere else a \$15 million deal were two paragraphs on
9 this MEA form that had to be signed from the director of
10 finance at Garrison to write the check and that that is
11 the total amount of information that would have been in
12 my mind when I would have approved this settlement
13 agreement, I just -- I just find that to be incredible.

14 Q. Well I didn't mean to suggest any such thing to
15 you. But we've established, have we not, that these MEAs
16 are the official record of the settlement decision.
17 Regardless of what discussions took place surrounding
18 them, this is what the Committee has by way of evidence
19 of the contemporaneous process. We have no other such
20 evidence, do we?

21 A. Well, you've said a lot and then asked one
22 question there. So in order for us --

23 MR. CASSADA: I'll object because it
24 mischaracterizes his prior testimony.

25 THE COURT: Overruled. Answer the best you can.

Cross - Magee

1 THE WITNESS: Okay. Could we break it down?

2 Because it had some -- it had some assumptions in there
3 that talked about what I had said that I did not say.

4 BY MR. SWETT:

5 Q. My point is simple. Okay? This is the official
6 record of the settlement decision-making process. Yes?

7 A. This is the -- I think I explained exactly what
8 this is. It's the official record of the document that
9 was submitted for the signatures on the approval regime
10 that was required so that the director of finance at
11 Garrison would be permitted to write the check to make
12 the payments for these cases that were approved, that had
13 been approved for settlement, and that were documented in
14 this deal. That's absolutely what this was.

15 Q. There was no other document routinely prepared to
16 memorialize the basis of settlement, was there?

17 A. That's correct. We were settling thousands of
18 cases.

19 Q. Okay. I want to talk to you --

20 MR. SWETT: Your Honor, what time do you envision
21 breaking? Because I'm about to embark on a different
22 subject.

23 THE COURT: About one o'clock.

24 BY MR. SWETT:

25 Q. Let's talk a little bit more about Waters & Kraus

Cross - Magee

1 and the circumstances involving Garlock's -- involving
2 the evolving relationship with that firm. Do you regard
3 Waters & Kraus as an accomplished, highly effective
4 plaintiff's law firm?

5 A. They were very successful. Yes.

6 Q. Is it the case that sometime beginning in the late
7 '90s or early 2000s, there were a number of spin-offs
8 from established asbestos personal injury plaintiffs' law
9 firms where younger lawyers went out on their own to try
10 and make their mark?

11 A. I believe that happened throughout the history.
12 Waters & Kraus itself was a spin-off from Baron & Budd.

13 Q. Waters & Kraus first came on -- it was just
14 emerging at about the same time you showed up at
15 Goodrich, wasn't it?

16 A. I don't remember the exact date, but I think
17 that's probably about right.

18 Q. Some of these firms decided that they didn't want
19 to devote their resources and their time to large numbers
20 of nonmalignant cases. They would rather take cases
21 involving significant damages and work them up in a much
22 more traditional way, isn't that so?

23 A. I guess that's your testimony. Their testimony --
24 I've never talked to any of them about why they did what
25 they did.

Cross - Magee

1 Q. You have attended these asbestos litigation
2 seminars from time to time?

3 A. I've attended a few of them. Yes.

4 Q. Nobody ever suggested to you that this was a
5 phenomenon of younger lawyers branching out from the
6 status firms deciding to take mesothelioma cases and to
7 prepare them in the traditional way, rather than resolve
8 them in en masse processing arrangements?

9 A. I suspect it was an economic decision for those
10 lawyers. I can't tell you sitting here today what was
11 the motivation for the lawyers who --

12 Q. I'm asking you whether you ever heard that.

13 A. I don't recall whether I ever heard that or not.

14 Q. Okay. Now, at about the time you were becoming a
15 Goodrich consultant, Garlock tried a rather unusual
16 litigation technique in defense of Waters & Kraus'
17 mesothelioma cases in Texas by way of all at once
18 removing all of those cases to the federal courts. Do
19 you remember that?

20 A. I remember hearing about that. That actually
21 happened before I came on the scene.

22 Q. But the denouement of it was after you were
23 EnPro's general counsel, wasn't it?

24 A. I'm sorry?

25 Q. The denouement, the playing out of that tactic?

Cross - Magee

1 A. I'm sorry. I wasn't familiar with that term. I
2 don't remember the exact date.

3 Q. Well you have the recollection that a large number
4 of cases were removed to the federal court on the
5 assertion that because Flexitallic and Federal-Mogul were
6 in bankruptcy in Delaware, Garlock's mesothelioma cases
7 should go there too because Garlock had cross-claims
8 against those Federal-Mogul entities, and so those
9 cross-claims were related to the Delaware bankruptcy. Do
10 you remember that?

11 A. I am familiar with that tactic that was chosen for
12 some Texas cases. Yes.

13 Q. And you're also aware, are you not, that
14 universally, without exception, the Texas district courts
15 remanded those cases to the state courts?

16 A. I understand that that ultimately happened. Yes.

17 Q. That maneuver inflicted a lot of cost on Waters &
18 Kraus?

19 A. I assume so, but I can't tell you what the costs
20 were.

21 Q. And threatened significant delay in their progress
22 toward trial on behalf of living mesothelioma victims;
23 right?

24 A. I won't dispute that. I don't know the details.

25 Q. Now Garlock took an emergency appeal to the Fifth

Cross - Magee

1 Circuit in order to try and get a stay of the remand.

2 A. I understand that happened. Yes.

3 Q. And Judge Parker for a panel -- Judge Parker,
4 having been an experienced asbestos judge at the district
5 court level, wrote for the panel denying the stay on the
6 grounds that Garlock had no probability of success of
7 demonstrating that it had real contribution claims over
8 against the Federal-Mogul entities; is that right?

9 A. I don't recall the details, but you're correct
10 that they were remanded.

11 Q. Am I also correct costs were later awarded by some
12 of the district courts against Garlock for having engaged
13 in this tactical maneuver without an objective basis to
14 believe that its supposed contribution claims were
15 related to the Federal-Mogul bankruptcy?

16 A. I didn't recall that. I had very little
17 involvement in that. At that point, we were trying to
18 get a brand new company up and running.

19 Q. You'll agree with me, won't you, that was a pretty
20 tough tactic for Garlock to have used with Waters &
21 Kraus?

22 A. I believe -- first of all, I wasn't finished with
23 my last answer.

24 Q. I'm sorry.

25 A. I wasn't involved and do remember hearing that

Cross - Magee

1 after the fact. So I can't confirm all your details, but
2 I will confirm that, as I came to understand it later,
3 that that was a tough tactic that was taken. Yes.

4 Q. Can't have done much for your friendly relations
5 with the Waters & Kraus firm, can it?

6 A. I'm sure it did not.

7 Q. And that's the same firm that later took the
8 Treggett case to trial?

9 A. That's correct. And targeted Garlock in that
10 case.

11 Q. Much as Garlock had targeted Waters & Kraus in
12 the removal escapade, isn't that so?

13 A. Again, you know what happened. I can't tell you
14 what the targeting was. But, yes, that's what had
15 happened.

16 Q. Well, before we go forward with the Treggett case,
17 I want to remind us all of a principal of law, that
18 principle of law that's enshrined in the Seventh
19 Amendment to the United States Constitution which, of
20 course, is the amendment that allows the right of jury
21 trial where, within the scope of that amendment, it says
22 "In suits of common law where the value in controversy
23 shall exceed \$20, the right of trial by jury shall be
24 preserved." And then here's the part I want to focus on,
25 and I don't mean this in a technical way. It goes on to

Cross - Magee

1 say, "In no fact tried by a jury shall be otherwise
2 re-examined in any court of the United States than
3 according to the rules of the common law." Do you
4 remember that from your Common Law class at UNC?

5 MR. CASSADA: Your Honor, I object to the
6 question. He's talking about the U.S. Constitution. I
7 believe Treggett was tried in a state court.

8 THE COURT: Overruled.

9 BY MR. SWETT:

10 Q. I'm not making a technical point here. I'm making
11 a point about our legal culture.

12 A. I'm generally familiar with the right to jury
13 trial. Yes, sir.

14 Q. And this notion of re-examining jury verdicts once
15 the verdict is in, other than by usual procedures, is a
16 tradition that goes back to the founding of our republic,
17 isn't it?

18 A. It's in the Constitution. As we know, there are
19 procedures for challenging awards of juries.

20 Q. There are. And apart from a direct appeal in
21 Treggett, Garlock undertook no such efforts. Right?

22 A. You mean ever?

23 Q. In the Treggett case?

24 A. I'm sorry. That's correct.

25 Q. And it ultimately settled the case on appeal.

Cross - Magee

1 A. That's correct.

2 Q. Now in the cases that were tried and that we've
3 discussed throughout this estimation proceeding,
4 including today a little bit of Fowers. Now we're
5 getting into Treggett. Those victims are dead now,
6 aren't they?

7 A. Unfortunately, yes, sir. It's a very, very
8 terrible disease and very sick victims.

9 Q. And Ron Eddins, the lawyer who tried the Treggett
10 case, he's dead too, did you know?

11 A. He did die, unfortunately, in an automobile
12 accident. That's correct.

13 Q. Do you think that it is a reasonable and fair
14 substitute for experiencing a fully prepared case in the
15 jury trial context to pull out selected snippets of
16 testimony and characterize them out of the mouths of the
17 defeated defense attorneys as a way of giving the Court a
18 real view of what those cases were all about?

19 A. If you're suggesting that what -- that the
20 quotations of Mr. Eddins to the jury in that case about
21 Unibestos exposure aren't relevant to what we're doing
22 here, Mr. Swett, then I disagree with you.

23 Q. No, that's not what I said. My contention is,
24 Mr. Magee, that no matter how hard we labor, no matter
25 how many snippets we pull out, no matter how earnestly

Cross - Magee

1 and energetically we attempt to recreate for the Court
2 what it -- what that case looked like, what the dynamics
3 were, what the factors favoring the plaintiff, what
4 factors favoring the defendant, all of the complex
5 realities that go into a jury trial, there is really no
6 way to replicate that experience here, is there?

7 A. If you're saying -- if you're suggesting we can't
8 play the whole trial or read the whole transcript, no,
9 sir, we can't. But the reason you have transcripts is so
10 that you have a record of what went on. And we have
11 certainly played -- shown you parts of those transcripts.
12 You were certainly able to bring any other parts of those
13 transcripts.

14 If you think in those transcripts somewhere it's
15 not clear that that case was all about Garlock pointing
16 at the asbestos insulation companies and Mr. Eddins
17 trying to demonstrate to the judge and to the jury that
18 those insulation companies couldn't be identified, then I
19 welcome you bringing that whole transcript in here and we
20 can parse every word.

21 Q. You're missing my point, but I'll go on. There
22 isn't really any effective way to recreate a situation
23 that you and your Garrison people and your outside
24 counsel were in when Treggett was called to trial and you
25 were put to the election of either accepting Mr. Iola's

Cross - Magee

1 last and best settlement demand or taking your chances
2 with the jury. We can't really feel today the pressures,
3 the pull in one direction or the other, that you were
4 subject to with that very serious decision at the time,
5 can we?

6 A. That the people who made that decision were
7 confronted with, that's correct. In fact, you mentioned
8 Mr. Iola. Mr. Iola testified, and we saw his testimony
9 about what was important in these cases.

10 Q. Let's see a little bit more of his testimony.

11 (Video begins playing at 12:39 p.m.)

12 (Video stops playing at 12:43 p.m.)

13 BY MR. SWETT:

14 Q. Now Mr. Iola testified that he was affiliated from
15 -- with the Waters & Kraus firm with particular
16 responsibility for negotiating its settlements; correct?

17 A. That's correct.

18 Q. You understood before hearing that transcript that
19 that's the role he played for Waters & Kraus?

20 A. Yes, I believe I testified that he and Mr. Glaspy
21 met regularly to discuss the Garlock cases.

22 Q. Right. Now let's turn to the Treggett case.
23 Mr. Treggett was a machinist in the Navy; correct?

24 A. Yes.

25 Q. And much of his work had been performed on

Cross - Magee

1 submarines?

2 A. That's correct. I believe one particular
3 submarine. Yes.

4 Q. He also -- well, you had commonsense notions from
5 experience about the kinds of different products that a
6 machinist on a Navy submarine was likely to have
7 encountered; correct?

8 A. Yes. And that's what this case was about.

9 Q. And you brought those expectations to bear and
10 Garlock's lawyers brought those expectations to bear as
11 they attempted to defend that case; right?

12 A. That's correct. Again, those exposures were what
13 this case was all about.

14 Q. You would have expected him to be exposed to
15 products manufactured by Owens Corning, Pittsburgh
16 Corning, Eagle-Picher, Keene, that sort of company;
17 right?

18 A. Yes. And in particular, Pittsburgh Corning and
19 Unibestos, because it was specified for Navy ship
20 applications.

21 Q. And Garlock brought to that Court evidence in the
22 form of expert opinion than since Pittsburgh Corning's
23 Unibestos was specified for Navy ships, it must have been
24 on the submarine that Mr. Treggett worked on. Right?

25 A. Yes, which obviously was ineffective.

Cross - Magee

1 Fortunately, after that case, Captain Wasson came on
2 board and was much more effective at demonstrating what
3 products were on board those ships.

4 Q. That court wasn't persuaded that that evidence was
5 sufficient, either to negate Mr. Treggett's evidence such
6 as it was, or to allow Garlock to get Pittsburgh Corning
7 on the verdict sheet, was it?

8 A. That's right. In the face of the testimony to the
9 Court and to the jury by Mr. Eddins that it was not true.

10 Q. Do you recall that Garlock criticizes Mr. Eddins
11 in the context of this estimation proceeding for
12 cross-examining Garlock's expert as to the foundation for
13 his opinion that there must have been Unibestos on that
14 ship? That's one of the points Garlock makes from time
15 to time, its exposition of the Treggett case in this
16 estimation proceeding?

17 A. That he could not have known because he wasn't
18 there. That's correct. In other words, doing exactly
19 that. If my client says he wasn't exposed, you don't
20 have anybody that was there with my client that can say
21 he was exposed.

22 Q. Or other competent evidence that the Court would
23 accept to place Unibestos on that ship from the
24 standpoint of the evidence that would go to the jury.

25 A. Which was obviously determined not to be

Cross - Magee

1 sufficient in that case, which is why we talked about how
2 much more money Garlock started spending to defend the
3 cases to try to better demonstrate that so that the Court
4 would accept that and that the juries would accept that
5 as demonstrating that that exposure did, in fact, occur.
6 It's exactly what we've been talking about, Mr. Swett.

7 Q. Now you also made the commonsense assumption based
8 on experience that Garlock gaskets were likely on the
9 submarine.

10 A. That's right. Yes.

11 Q. And that those gaskets likely contained asbestos.

12 A. We would have been able to make that determination
13 given time periods. Yes.

14 Q. But you put the plaintiff to his proof, didn't
15 you, that he had contact with Garlock gaskets?

16 A. I'm sure we did. Yes.

17 Q. He was cross-examined by the defense attorneys
18 from the standpoint -- well, how do you know they were
19 Garlock? And how do you know they had asbestos? Right?

20 A. Right. Well there were -- would have been other
21 gasket manufacturers who had been supplying to the Navy,
22 and Garlock would have been supplying both asbestos and
23 nonasbestos gaskets. And depending on the pipes, where
24 it would have been, they could have been either. So I
25 would have thought that would be appropriate

Cross - Magee

1 cross-examination.

2 Q. Because you were entitled to put the plaintiff to
3 his proof; correct?

4 A. Correct.

5 Q. And that's not a matter of what is reasonable to
6 believe or what common experience and common sense tell
7 you. It's a matter of the admissible evidence presented
8 to the Court for further presentation to the jury;
9 correct?

10 A. Yes. And as we now know, there was some
11 potentially admissible evidence that Garlock didn't have
12 there and should have asked for, should have asked for in
13 the negotiation of that case.

14 Q. And that's a ballot, isn't it?

15 A. It's a ballot in the Pittsburgh Corning case,
16 Mr. Swett, where the Waters & Kraus firm says that there
17 was exposure to the products. In fact, it affirms that
18 under penalty of perjury. Certainly, there would be even
19 better evidence of that if it was a trust claim. But as
20 you know, the Pittsburgh Corning case has not yet been
21 confirmed, so there are no trust claims yet in the
22 Pittsburgh Corning case.

23 Q. Are you aware, sir, that under the applicable
24 bankruptcy rules, the test for the certification of the
25 ballot is a reasonable belief in the circumstances?

Cross - Magee

1 A. All I know --

2 Q. Did you know that?

3 MR. CASSADA: Object to the form of the question.

4 THE COURT: Overruled.

5 MR. CASSADA: And lack of foundation.

6 THE WITNESS: All I know, Mr. Swett, is what that
7 ballot says on its face. And it says that they're
8 affirming under penalty of perjury that there was
9 exposure to an asbestos-related product of the
10 manufacturer.

11 BY MR. SWETT:

12 Q. And there's a difference, isn't there, between
13 reasonable belief under the circumstances and admissible
14 evidence of the fact of the presence of Unibestos on that
15 submarine?

16 A. I think it would have been important to the judge
17 in determining whether Unibestos should be on the verdict
18 form, Pittsburgh Corning should have been on the verdict
19 form, and then it also would have been important evidence
20 to the jury that that existed if they had been permitted
21 to know that --

22 Q. You have --

23 A. -- and then they could have inferred what that
24 reasonable basis meant in terms of whether that was
25 evidence of exposure or not.

Cross - Magee

1 Q. To this very --

2 A. They didn't have that opportunity in this case.

3 Q. To this very day you have never seen a
4 contemporaneous document, one created at or about the
5 time when Mr. Treggett was on that submarine that points
6 to the presence, specifically, of Unibestos on that ship,
7 have you?

8 A. A contemporaneous document from when he was on
9 that ship?

10 Q. Right.

11 A. I have not, other than -- I mean, you heard
12 Captain Wasson sitting here talking about the BuShips
13 manual and other things that would have had
14 specifications or what product would have been where on
15 the Navy ship. I'm not sure what else we could have,
16 other than that.

17 Q. You might have had ship records specific to that
18 ship, isn't that so?

19 A. Well certainly we might have. Yes.

20 Q. In other cases you have succeeded in establishing
21 the presence of a product on a specific ship through
22 records particular to that ship; correct?

23 A. That's right. And then the next step is, can we
24 demonstrate that the claimant actually had exposure to
25 the product in his breathing zone so that we can -- when

Cross - Magee

1 these cases are targeted against Garlock and the
2 claimant's willing to say yeah, I might have been on the
3 ship but I never remember being around it when it was
4 being disturbed or when I breathed it. We've got to
5 combat that, Mr. Swett. Our contention here is that when
6 you have evidence that the claimant, out of his mouth,
7 has acknowledged that exposure that it makes a difference
8 and it makes a significant difference.

9 Q. And my contention back to you is that a statement
10 by a lawyer under a test that points to reasonable belief
11 in the circumstances is not the equivalent of admissible
12 evidence against that plaintiff with respect to the
13 specific fact of the presence of a specific product on a
14 specific ship. So I guess we'll just have to leave it to
15 the judge to decide on the fuller record which of us has
16 the better of that debate. But one thing should be clear
17 --

18 A. So I don't get to respond to what you just said?

19 Q. Go right ahead.

20 A. I mean, that's your view of it. If you're saying
21 that it's not even evidence that should be considered,
22 then I very much disagree with you. And we know for a
23 fact that in three cases where it has been considered, it
24 has made a significant difference.

25 Q. Actually, we only know that about, according to

Cross - Magee

1 Mr. Turlik, in two of them, isn't that so? Because in
2 the third, the trust claims weren't admitted into
3 evidence. That's the Simpson case; right?

4 A. No. I was talking about Davis, Dougherty and
5 Messenger.

6 Q. And Dougherty is the case where the trial
7 evaluation form prepared by Turlik's firm says 30 to 60
8 days before the trial there is no PID; right?

9 A. But we've also heard testimony that there was
10 enough ID for that case to go forward.

11 Q. We haven't seen that testimony but we have seen
12 the "no ID," and we have seen the trial evaluation form,
13 and we have seen the plaintiff's testimony that he didn't
14 believe he was exposed to asbestos at Beth Steel [sic] or
15 at Ingersoll Rand. Didn't we see that?

16 A. I wasn't here for much of that testimony. I
17 assume that you must have.

18 Q. Well the record will stand as it is.

19 MR. CASSADA: I do object to the testimony because
20 we did see Mr. Turlik's testimony.

21 MR. SWETT: We did not see the deposition that he
22 said some co-worker came forward.

23 THE COURT: Let's go ahead.

24 BY MR. SWETT:

25 Q. In any event, Garlock's attorney cross-examined

Cross - Magee

1 Mr. Treggett, the dying mesothelioma victim, on facts as
2 to which Garlock, based upon its experience and
3 reasonable experience, knew to be true but which is that
4 Garlock gaskets were there and Garlock gaskets had
5 asbestos but cross-examined him from the premise that he
6 didn't have the evidence that that was so. That took
7 place in that trial, didn't it, Mr. Magee?

8 A. I'm sure it did. Yes. Although I will say it's
9 clear that the focus of it was what dangerous products
10 was he exposed to.

11 Q. It's also clear from the record, is it not, that
12 Mr. Treggett disclosed specifically by name and product
13 type a large number of non-Garlock asbestos-containing
14 products to which he was exposed.

15 A. Not thermal insulation companies.

16 Q. He disclosed that he was exposed to DeLaval pumps,
17 Gorman Rupp pumps, Peerless pumps, Vickers pumps, Viking
18 pumps, Warren pumps, Westinghouse pumps, Ingersoll Rand
19 compressors, Westinghouse turbines, Crane valves, Yarway
20 valves, DeLaval -- DeLaval purifiers, Sharples purifiers,
21 Yarway steam traps, Westinghouse motors, Asbeston
22 blankets, and those were amosite, by the way, weren't
23 they?

24 A. I'm not aware of that particular disclosure but,
25 yeah, I think those were. Most all of those other

Cross - Magee

1 products you have named would have been in that
2 litigation because they would have allegedly had
3 components like gaskets in them with asbestos.

4 Q. And at that time in California, those pump and
5 valve manufacturers potentially had a lot of legal
6 liability for having exposed the workers to Garlock
7 gaskets through their own products; isn't that true?

8 A. Whatever asbestos-containing components they had,
9 whether they be Garlock or somebody else.

10 Q. Oftentimes they were Garlock; right?

11 A. Sometimes. Yes.

12 Q. And now after the O'Neil decision by the
13 California Supreme Court in 2012, just last year, those
14 equipment manufacturers have much less legal
15 responsibility for the exposures resulting from Garlock
16 gaskets in their equipment; correct?

17 A. And as a result, we understand that cases aren't
18 being filed in California at nearly the rate they once
19 were.

20 Q. You further understand, do you not, that that is
21 an unfavorable development from Garlock -- for Garlock
22 from the standpoint of its ability to spread whatever
23 liability it is hit with across the set of equipment
24 manufacturers in a case?

25 A. Temporarily. But if it is resulting in those

Cross - Magee

1 cases moving out of California, I submit that would have
2 been a very favorable development for Garlock.

3 Q. And Mr. Treggett also disclosed exposures to Alcoa
4 Locomotives and Brakes, Bendix Brakes, General Motors
5 Locomotive and Brakes, AC Delco Brakes, General Electric
6 Locomotives, and Fairbanks Morse Locomotives. That's an
7 EnPro company, isn't it?

8 A. Yes. Fairbanks Morse Locomotives, I don't believe
9 -- Fairbanks Morse was lots of different businesses, and
10 EnPro never owned the business; it had owned the
11 Fairbanks Morse Engines and Pumps.

12 Q. And Paco Quick-Set Joint and Compound. It's a
13 dusty product, isn't it?

14 A. It's a dusty Chrysotile product. Yes.

15 Q. Your beef is he didn't disclose the names of
16 insulation manufacturers.

17 A. Yes, sir, that's -- that is my beef. Not only did
18 he not disclose it, but they expressly denied that it was
19 true, and they expressly made a big deal out of the fact
20 that what Garlock's defense was all about, about those
21 relative exposures and about the exposure to the
22 dangerous products, was not true because Garlock did not
23 establish it. That's my beef.

24 My beef is that rather than saying yeah, just like
25 I'd said seven months ago, it's reasonably likely that

Cross - Magee

1 there was Unibestos there in the breathing zone that
2 would allow me to make a claim against that bankruptcy.
3 That was not what was said and that's my beef. Yes, sir.

4 Q. But there's no question but that this unfortunate
5 plaintiff disclosed that he was in contact with asbestos
6 from a variety of sources; correct?

7 A. Correct. Emphasizing that Garlock exposure,
8 because Garlock was the company that he was trying to pin
9 it on at the trial.

10 Q. Including insulation products. You are aware,
11 are you not, that Mr. Treggett testified repeatedly to
12 his exposures to insulation?

13 A. No. I'm aware that he testified that he -- that
14 there was insulation products on the scene where he
15 worked, not that he was exposed to fibers from those
16 insulation products. Let's put it this way. If that had
17 been his testimony, I can't imagine the judge wouldn't
18 have allowed Garlock to get them on the jury form, and he
19 did not.

20 Q. I guess we'll just have to go through this.

21 Here is GST-5494, an interrogatory response. And
22 let's go to page 37. California, helpfully, requires
23 lawyers to number their lines in their writings. So
24 let's go to line 17. I'll read it in its entirety.

25 Plaintiff's exposure to asbestos is a result of

Cross - Magee

1 his frequent work on these products that arose as a
2 result of breathing in asbestos fibers on a repeat and
3 continuing basis from insulation and/or other
4 asbestos-containing products installed, disturbed and/or
5 removed through his work and the work of other tradesmen
6 working in his immediate vicinity. Specifically,
7 plaintiff also recalls that compressors were equipped
8 with gaskets that he was required to remove and replace.
9 The insulation and removal process was often dusty and
10 plaintiff was exposed to asbestos as a result of being
11 required to hammer out and cut asbestos-containing
12 gaskets that were supplied with the foregoing compressors
13 and/or specified for use in the compressors by the
14 manufacturers listed herein.

15 Plaintiff was also often required to remove,
16 apply, cut or disturb asbestos-containing blankets,
17 including Asbeston on the foregoing purifiers. Plaintiff
18 was exposed to asbestos dust as a result of this work
19 with these blankets supplied with the equipment and/or
20 specified for use.

21 There seems to be a gap in the document. I'm
22 sorry. In any event, Asbeston blankets, that's a form of
23 insulation; isn't it?

24 A. Yes.

25 Q. And he gave you the specific product name, didn't

Cross - Magee

1 he?

2 A. This is the -- again, this is interrogatories
3 where he -- before the targeting had been determined
4 where a lot was listed. You heard Mr. Glaspy sit here
5 and testify previously in this case about how
6 Mr. Treggett's story changed when time for trial came.

7 Q. I know he said that. But when I went to read the
8 testimony, I'm telling you I didn't see the same pattern
9 that Mr. Glaspy testified to. I guess we all see it from
10 our own point of view, but let's read some more testimony
11 by Mr. Treggett. GST-5498. 5498. 5498. Line 31. I'm
12 sorry. Page 31, line 16.

13 Question: "Mr. Treggett, did you understand or
14 learn at any time whether or not any of this
15 insulation or lagging you just described
16 encountering in the Navy contained asbestos?"

17 Answer: "We knew that the piping and the blankets
18 were asbestos. I think it was just assumed that
19 also the engine lagging was asbestos. It was the
20 only insulation that really worked that was
21 available."

22 MR. CASSADA: Your Honor, I just want to place a
23 clarifying objection here. I thought I understood you
24 were going to trial testimony.

25 MR. SWETT: I'm sorry. It's the deposition.

Cross - Magee

1 MR. CASSADA: All right. Thank you.

2 MR. SWETT: Let's move on to page 34, line 24.

3 "When you were doing your repairs on the pumps
4 aboard the ship, was it necessary for you as a
5 machinist mate to remove or disturb any insulation
6 or insulation material from the exterior of the
7 pumps before your work could be done?"

8 Answer: "All the time. Yeah. I mean that was
9 the first thing we usually did. Yeah."

10 Now Mr. Glaspy complains that it came out
11 differently when the plaintiff testified at trial.
12 That's not an unusual phenomenon, is it? That's why we
13 have impeachment; correct?

14 A. It should be. That is why we have impeachment. I
15 would hope it would be an unusual phenomenon that a
16 claimant would say one thing in his deposition and
17 something completely different at his trial. I hope that
18 -- as I said earlier, I really believe the best in
19 people. I hope that would be a very unusual phenomenon,
20 Mr. Swett.

21 Q. Well it's a natural aspect of the adversary system
22 that the witness is subjected to the pressures of
23 cross-examination. And if the defendant -- he testified
24 in a different way on a prior occasion, the examining
25 party has the means to call into account by impeachment;

Cross - Magee

1 correct?

2 A. That's correct. Even more reason why I would hope
3 that people would testify truthfully and correctly. I
4 mean, there's no -- I just take issue with your -- with
5 the idea that most people don't testify correctly and
6 consistently.

7 Q. Oh. I fully agree with you. But I'm pointing to
8 a different aspect of the trial process, which is that as
9 defendants fall out, as the facts develop, as memories
10 change, as positions harden the way your position has
11 hardened in this case, the reality to a witness with all
12 honest intentions can come to seem different. Don't you
13 think that's true?

14 A. I guess so. But as you just said, as defendants
15 drop out. So as a defendant dropped out that might have
16 been responsible for insulation, suddenly this -- I would
17 hope that testimony wouldn't change about -- about all
18 the time. Yeah, that was the first thing we did was tear
19 out the insulation. You would think that that part of
20 the testimony would remain consistent. Yes.

21 Q. And you had that to hold him to during the trial,
22 didn't you?

23 A. Yeah, to a gentleman who was a dying man dying of
24 a very, very bad disease.

25 Q. And that's what you-all call the hazards of

Cross - Magee

1 litigation, isn't it?

2 A. The hazards -- I would call the hazards of
3 litigation being the fact that you've got a very
4 sympathetic plaintiff. I would not call --

5 Q. That's what I meant.

6 A. I would not call the hazards of litigation having
7 to deal with a story that was said one way in a
8 deposition and a different way at trial.

9 Q. Well we haven't seen that here. We've heard that
10 a lot, but what we have seen is that Garlock was well
11 represented by zealous advocates well-equipped by
12 discovery and other means to get at their view of the
13 truth, haven't we?

14 A. That's exactly what this case was about. That's
15 what I've been saying. And we have seen what some of the
16 zealous advocates said in the case about this very
17 exposure.

18 Q. And who did not hesitate to question the --
19 cross-examine the plaintiff based upon the assumption
20 that facts -- that they reasonably believed and knew to
21 be true. I'm speaking now about the defense attorneys,
22 that they supposed -- let me rephrase.

23 They did not hesitate to cross-examine the
24 plaintiff as to the existence or not based upon his
25 evidence of facts that those defense attorneys reasonably

Cross - Magee

1 supposed to be true. They challenged his evidence even
2 though they supposed it to be true, isn't that so?

3 A. As best as you can challenge the evidence of a
4 dying claimant in a courtroom. Yes.

5 Q. Your Honor, we're at an a natural break point.

6 THE COURT: All right. Let's take a break for
7 lunch and come back at 2:15.

8 (Off the record at 1:06 p.m.)

9 (On the record at 2:18 p.m.)

10 THE COURT: All right. Mr. Swett.

11 MR. SWETT: Your Honor, when Mr. Magee leaves the
12 stand, our next witness will be Mr. Hanly. Following
13 that, time permitting, with the kind consent of opposing
14 counsel, we're going to change what had been our intended
15 order and bring Mr. Patton, and Mr. McClain will testify
16 in the morning.

17 THE COURT: Okay.

18 MR. SWETT: I am grateful to the -- to counsel for
19 the accommodation. I also would like to correct a
20 misstatement. I think I said or suggested in a question
21 that Asbeston was amosite, and I am informed by my
22 careful colleague that that's not true and that the
23 record is that it's Chrysotile. I don't mean to misstate
24 that, so I want to make sure to correct it.

25 BY MR. SWETT:

Cross - Magee

1 Q. I would like to come back, Mr. Magee, to your
2 contention that Mr. Treggett -- I think the term you used
3 was "minimized" his insulation exposure at trial compared
4 to his previous admissions in his deposition.

5 A. Yes, sir.

6 Q. And I will ask you whether you're aware of this
7 testimony. In GST-5443, this is the trial. Can we go to
8 the first page to make sure we have the cover page? Oh,
9 this is the first page, Wednesday, September 8, 2004,
10 William F. Fahey, judge. Calling the Treggett matter.
11 And we're going to go to page 1035.

12 I'm sorry for the technical glitch. I'm looking
13 at transcript September 14, 2004 before Judge Fahey.
14 This transcript is GST-5443. Mr. Walker, do you have
15 5443? In this instance I'll just have to read from the
16 physical copy. My copy isn't that good either, but we'll
17 see if this works. We're at page 1035, line 17. There's
18 a question by Mr. Rome: "I'm talking about all the
19 lagging pipes, Mr. Treggett."

20 And he answers: "Even there I don't know if I
21 could make an educated guess. Inside it was like
22 a spaghetti works. The engineering spaces were in
23 excess of 130' in length. We had a lot of lag
24 piping. Not only steam piping was lagged; there
25 was also other piping that was lagged also."

Cross - Magee

1 Question: "Did you ever speak with fellow
2 shipmates and make comments about there was miles
3 of pipe on board?"

4 Answer: "I couldn't say that we didn't talk about
5 such things, but there was miles of pipe and miles
6 and miles, miles and miles," and picking up with
7 the next page, "of wire. I mean there was a lot
8 of equipment crammed into that boat."

9 Were you aware that Mr. Treggett spoke of the
10 miles and miles of lagged piping at the trial?

11 A. Yes, I was.

12 Q. And that the lagged piping means insulated piping.
13 Right?

14 A. Actually, the purpose of that testimony was to
15 talk about how there was lots of piping. And if somebody
16 said that there was Unibestos in part of that piping,
17 that had nothing to do with where he worked. Later in
18 that same transcript, I think you'll see that he said 70
19 percent of his time was removing gaskets and only about
20 three percent of his time was around insulation.

21 Q. Let's take a look at the September 16th
22 transcript, GST-5444. I'm going to read a little bit to
23 you from page 1226.

24 A. I'm sorry. What document is this?

25 Q. This is another transcript of the trial.

Cross - Magee

1 A. Okay.

2 Q. Now he's talking about insulating cement or mud.

3 At the top, the question is saying: "The rigid pipe
4 insulation covered with cloth. There would be an
5 insulating cement or mud. It would be mixed up or
6 put over; correct?"

7 Answer is: "Generally speaking, that was part of
8 the process. Yes."

9 Question: "And it was typically painted; right?"

10 Answer: "Covered with a cloth and painted. Yes."

11 Question: "But when they mixed the mud, that would
12 create dust too?"

13 Answer: "Yes."

14 Question: "And that mud also had asbestos in it,
15 didn't it?"

16 Answer: "To my knowledge, yes."

17 Question: "And you would breathe the dust from
18 that cement then when it was mixed up in your
19 presence, didn't you?"

20 Answer: "When it was present we would all breathe
21 it. Yes."

22 Question: "Just like you would breathe the dust
23 from pipe insulation if that was torn off and
24 removed in your presence or applied or cut; is
25 that correct?"

Cross - Magee

1 Answer: "That's correct."

2 So Mr. Treggett did put himself in the breathing
3 zone of asbestos-containing products and insulating
4 nature such as the asbestos cement that went on the
5 insulation; right?

6 A. Yes. And if you read this as the part of the
7 cross-examination and if you read it as the entire
8 context of the cross-examination, you will come to the
9 conclusion undoubtedly that he was minimizing that
10 exposure. He even said later in that testimony that it
11 was 70 percent gasket exposure and only three percent
12 insulation exposure.

13 Q. Are you aware that the plaintiff's own expert in
14 that case was of the view -- I'm sorry, that the
15 plaintiff had an expert, Dr. Hammar?

16 A. I am aware that the plaintiff had an expert, and I
17 believe I remembered it was Dr. Hammar.

18 Q. Are you aware that Dr. Hammar identified Unibestos
19 as a brand of insulation that probably would have been
20 present on the Marshall?

21 A. I didn't remember that, but obviously that wasn't
22 enough for the judge.

23 Q. It doesn't exactly bespeak coyness on the part of
24 the plaintiff, though, does it?

25 A. I'm sorry?

Cross - Magee

1 Q. It doesn't actually suggest that Mr. Treggett was
2 hiding anything if his own expert is saying it.

3 A. I want you to read Mr. Treggett's testimony about
4 it. You read some of it. You're not putting the whole
5 testimony there.

6 Q. That's what redirect is for.

7 A. Well, then, good. I hope we'll be able to see
8 some of that testimony.

9 Q. Let's also take a look at what Garlock said about
10 the trial record when it appealed. You remember that
11 Garlock took an appeal and presented a brief to the
12 California appellate court. Right?

13 A. I do remember that we did.

14 Q. Let's put up ACC-795. This is Garlock's appellate
15 brief. And I'd like to go to page 26.

16 There's a sub-heading on page 26 that says
17 "Insulation, including Unibestos insulation." It says,
18 "Mr. Treggett testified that he had massive exposure to
19 insulation or lagging on the Marshall. He said
20 insulation was placed on the miles of pipes on the
21 Marshall and that he was present when it was removed and
22 replaced." And then there are record references. "He
23 inhaled asbestos fibers from the lagging every day he was
24 on the ship during the six-month overhaul." More record
25 references. "The dust from the lagging covered his

Cross - Magee

1 clothes and hair."

2 More record references. "Mr. Treggett was not
3 only in the presence of other workers while they removed
4 the lagging, but he removed the lagging himself during
5 the three percent of his work."

6 So Garlock, to the appellate court, was presenting
7 those exposures as "massive," wasn't it?

8 A. Appellate counsel was trying to indicate that that
9 should have been enough for the judge to conclude that
10 Unibestos should have been included on the jury's verdict
11 form. You know, the judge determined not to put
12 Unibestos on the jury's verdict form as a result of
13 Mr. Eddins' argument that it wasn't true, bolstered by
14 the testimony of Mr. Treggett in total that we've only
15 seen parts of.

16 Q. You're saying that the context matters; correct?

17 A. The context does matter, especially where the
18 conclusion by the trial judge was not to put Unibestos on
19 the verdict form.

20 Q. And the procedural posture matters; right?

21 A. The procedural context is important particularly
22 when you're talking about an argument to the appellate
23 court based on parts of a record.

24 Q. And the same record that you're suggesting to the
25 judge here displays the plaintiff minimizing his

Cross - Magee

1 exposures you presented to the California Supreme Court
2 through your counsel in this brief as depicting massive
3 exposures through testimony right out of the mouth of the
4 plaintiff. Right?

5 A. Those are your words.

6 Q. No, no. "Massive exposure" is right there.

7 A. They were presented to demonstrate that there
8 should have been -- I lost the name -- that Unibestos
9 should have been on the verdict form. That's what the
10 purpose of this was. That was the error that was
11 intended to be conveyed.

12 Q. Now, we've also established that in seeking to
13 place --

14 A. In fact, let me just add, Mr. Swett, that was
15 Garlock's whole intention at trial was to demonstrate
16 that he had had massive exposures to insulation. So it's
17 not -- that's not a different position that Garlock was
18 taking on appeal that there were massive exposures to
19 Unibestos insulation.

20 Q. It's a different interpretation of what the
21 plaintiff said at trial, isn't it? Isn't that clear from
22 this excerpt?

23 A. Well, you're -- that's part -- that's one part of
24 that brief, and I'll acknowledge that that's what that
25 says. We need to get it in context.

Cross - Magee

1 Q. And you're in a different context now. And your
2 position is being voiced differently than it was voiced
3 in the context and posture of the California appeal.

4 A. Maybe I haven't been making myself clear,
5 Mr. Swett. My position is that what happened was
6 Mr. Eddins, by testifying that it wasn't true, was able
7 to keep Pittsburgh Corning and Unibestos off the jury
8 verdict form, despite the fact that there had been a
9 ballot filed in that case just seven months earlier, and
10 that because the jury wasn't able to consider Unibestos
11 as it should have been, because they weren't on the
12 verdict form, that that information about the claimant
13 having made that allegation against the trust would have
14 been important both to the judge and to the jury.

15 Q. I think your position has been made clearly. But
16 what I'd like to get unmistakable on the record is that
17 it was Garlock's burden of proof to show by admissible
18 evidence that Unibestos was on that ship where the
19 purpose of eliciting that was to get Pittsburgh Corning
20 on the verdict form and allocate liability to it.
21 Correct?

22 A. Yes, sir, but it serves two purposes. Number one,
23 for that purpose; number two, to demonstrate that it was
24 the Unibestos and not Garlock's product that caused the
25 disease and that was not Garlock's burden. It was the

Cross - Magee

1 plaintiff's burden to demonstrate that Garlock's product
2 was the substantial contributing cause of his
3 mesothelioma. And so this kind of -- this serves two
4 purposes. Number one, to say no, it wasn't Garlock.
5 We've demonstrated through science that it wasn't and we
6 can show you what did cause the disease. And secondly,
7 if they were to find Garlock liable, to demonstrate that
8 some of that -- a large part of that apportionment should
9 have gone to Unibestos.

10 Q. Now let's suppose -- just to sharpen this point,
11 suppose that the plaintiff renders interrogatories to the
12 best of the plaintiff's knowledge and recollection.
13 Okay? You make that supposition with me? I'm not
14 binding you to an interpretation of the Treggett case
15 here.

16 A. Okay.

17 Q. Let's further suppose that the plaintiff sits for
18 a deposition in California. You're aware that the
19 California depositions can go on for a month? Thirty
20 days of constant questioning by a raft of defense
21 attorneys of the dying mesothelioma victim? Are you
22 aware of that?

23 A. I'm not aware of those specifics how long they can
24 go on.

25 Q. Okay. But let's suppose he comes to the

Cross - Magee

1 deposition and he testifies to the best of his knowledge
2 and recollection and answers all the questions about
3 exposures. Okay? And now he has to go to trial and make
4 his case, only causation and all of the other elements
5 against the defendants he'd sued. And that's his burden;
6 right?

7 A. And by that time, there's probably a small subset
8 of defendants that he's trying to make that case against.
9 Yes.

10 Q. And now let's suppose that the defendant wants to
11 place some third party on the verdict form. Okay?

12 A. Okay.

13 Q. Now if you're accepting for the sake of this
14 debate that the interrogatory answers were honestly
15 rendered and the deposition questions were honestly
16 rendered, that's what the defendant can fairly expect;
17 isn't it?

18 A. Yes.

19 Q. But what the defendant cannot expect is that the
20 plaintiff's lawyer will voluntarily divert his own
21 efforts, when he's heading into an exigent trial on
22 behalf of a dying mesothelioma victim, to go out of his
23 way and exert his efforts to build a defendant's
24 apportionment case against a third person. Do you agree
25 with that?

Cross - Magee

1 A. And obviously that did not happen. Yeah, I can
2 agree that he's not going to go out of his way to do
3 that.

4 Q. And he has no duty to.

5 A. He has a duty to tell the truth about what he
6 knows.

7 Q. He has a duty to have his client render the
8 discovery honestly to the best of his ability. He has
9 the duty to disclose what documents are requested in
10 discovery. And failing -- I mean, accomplishing that,
11 the plaintiff's lawyer cannot be looked to by the
12 defendant to exert efforts to build the defendant's
13 apportionment case. Do you agree with me on that?

14 A. I agree he can only be expected to be truthful
15 about what he knows. And if he chooses to testify to the
16 jury, that he better testify to the jury truthfully.

17 Q. And what you're really speaking about there is a
18 closing argument, isn't it?

19 A. I'm talking about -- I don't think -- I'm talking
20 about something that happened during a closing argument.
21 I certainly wouldn't say it's closing argument. A
22 plaintiff's lawyer shouldn't be able to testify to the
23 jury about the facts of an exposure.

24 Q. I'm trying to get at what you mean by that.
25 Mr. Eddins didn't take the stand and raise his right arm,

Cross - Magee

1 did he? His right hand.

2 A. No. No.

3 Q. He was arguing his case to the jury. And you take
4 exception to the -- you think he overdid it. You think
5 he misspoke when he said that not only does Garlock's
6 expert not have evidence of Unibestos; he doesn't have
7 the evidence because it isn't true. That's what you're
8 focusing on; right?

9 A. He said it much differently from that. He put a
10 period there and said it is not true. Yes, that is
11 exactly what I'm taking did.

12 Q. That's what you're talking about?

13 A. That's what I'm taking exception to.

14 Q. You're characterizing that as testifying?

15 A. I would think a juror would think that was
16 testimony being -- this lawyer is telling him that it's
17 just not true.

18 Q. Did you -- but in context, remember context. And
19 context and procedural posture are important and could be
20 characterized as a bit of an overstepping of the proper
21 grounds of closing argument. But not his testimony;
22 isn't that right?

23 A. Well, I mean, I guess if you mean in the formal
24 definition of what testimony is, it's not testimony. But
25 I think it -- the word "testimony" would include you

Cross - Magee

1 standing up in front of a jury and telling them something
2 that you portray as a fact. That would be testimony.
3 And I would think that that would be very important to a
4 juror.

5 Q. And in your experience, has it been uncommon for
6 lawyers to overstate in closing arguments?

7 A. Well we made it clear earlier that I'm not a
8 litigator, thank goodness.

9 Q. You've been a careful observer of this case. Do
10 you think everyone in this room is innocent of
11 overstatement and arguments to this court?

12 A. I think there's a difference between
13 overstatements and misrepresentation, Mr. Swett.

14 Q. And if it was a serious issue for Garlock then, it
15 could have raised it. They could have raised it on
16 appeal, couldn't it?

17 A. It certainly could have. Yes.

18 Q. Are you aware that at the time Garlock did not
19 challenge Mr. Eddins' statement as prejudicial to the
20 jury as requiring a mistrial or as anything of the sort?

21 A. You mean contemporaneously.

22 Q. At the trial.

23 A. It did not happen at the trial. Yes, sir.

24 Q. Are you aware they didn't raise that question on
25 appeal as a reversible point?

Cross - Magee

1 A. Well at the time it didn't know that -- Mr. Swett,
2 at the time, Garlock was unaware that Mr. Treggett had
3 cast a ballot in a Pittsburgh Corning case seven months
4 prior to that testimony and prior to that argument.

5 Q. Garlock was aware that the plaintiff's expert in
6 the Treggett case believed that it was likely that
7 Unibestos was on the ship. The plaintiff's expert said
8 that; right?

9 A. That it was on the ship? Correct. Yes.

10 Q. And that might be a reasonable basis to believe
11 that fact for purposes of the different context of the
12 Pittsburgh Corning vote; right?

13 A. I think we've probably established that we -- our
14 opinions differ on what that ballot means.

15 Q. Okay. Let's turn to the subject of the Asbeston
16 blankets. ACC-795 is the appellate brief, and we're
17 going to go to page 28. If we could enlarge the first
18 paragraph please. This is Garlock's brief on appeal.
19 The sub-heading is "Asbeston Blankets."

20 "Mr. Treggett said he was exposed to asbestos
21 blankets 90 percent of the time he performed
22 repairs on board the Marshall. He said he
23 removed the blankets almost daily and that it
24 created a 'big cloud of dust.' In other words --
25 and here Garlock gives italics emphasize. "Nearly

Cross - Magee

1 every time Mr. Treggett was exposed to a Garlock
2 gasket, he was also exposed to a cloud of dust
3 from an asbestos blanket." That ends the Italics.
4 "Mr. Treggett himself identified those blankets
5 as Asbeston blankets. And plaintiff's expert,
6 Dr. Hammar, said that with respect to the hands-on
7 work that Mr. Treggett did; when you look at the
8 universe of products discussed at trial, the
9 blankets were the thing that Mr. Treggett came
10 into direct contact with most often.

11 And I have omitted record references throughout
12 that. Are you aware that Garlock was taking the position
13 on appeal that Mr. Treggett had admitted very substantial
14 exposures to clouds of dust caused by Asbeston blankets?

15 A. I did not remember exactly what the grounds of the
16 appeal were other than, obviously, the Dr. Longo part
17 that we talked about yesterday. But I do remember that
18 this was consistent with what the testimony had been at
19 the deposition.

20 Q. Now Garlock sought to get Asbeston on the verdict
21 sheet; right?

22 A. That's my understanding.

23 Q. And as I've corrected myself and pointed out,
24 Asbeston was a Chrysotile product?

25 A. I'll take your representation on that.

Cross - Magee

1 Q. So if that's true, then Garlock was taking the
2 position that, well, Chrysotile doesn't hurt you. But if
3 it does, then there's other Chrysotile sources on this
4 ship that should be -- that should share the
5 responsibility. Right?

6 A. Yeah. Well, that would have been in the sharing
7 the responsibility part of it, not in the part of what
8 Garlock was pointing to as having been responsible for
9 causing the disease.

10 Q. In the sharing?

11 A. Garlock would have been pointing to the amosite
12 product as being responsible for the disease. You recall
13 Mr. Eddins talking about no amosite in his closing
14 argument but, certainly, it would have been trying to
15 establish that there were other Chrysotile products that
16 he was exposed to so that they could be on the verdict
17 and that more shares would be apportioned.

18 Q. Garlock also sought to have Flexitallic added to
19 the verdict sheet; correct?

20 A. I assume so.

21 Q. By this time, Flexitallic was in bankruptcy. But
22 California law permits the defendant upon appropriate
23 proof to add a bankrupt to the verdict sheet; is that
24 right?

25 A. I assume that's the case.

Cross - Magee

1 Q. Garlock did not succeed in having Flexitallic or
2 Asbeston added to the jury form, did it?

3 A. I don't believe it did.

4 Q. Do you recall that the reason why it didn't
5 succeed in getting Flexitallic on the verdict sheet is
6 that Garlock was unable to correctly name the -- give the
7 corporate name of the manufacturer of the Flexitallic
8 gaskets?

9 A. I don't recall that. My recollection is about the
10 Unibestos and amosite because that was the focus that
11 Garlock focused on in defending the case.

12 Q. So you're not aware that Garlock also failed to
13 get Asbeston on the verdict sheet because it couldn't
14 name the manufacturer of the Asbeston.

15 A. I thought you said Flexitallic.

16 Q. I did that first time. The same flaw prevented in
17 its evidence prevented Garlock from getting Asbeston on
18 the verdict sheet?

19 A. I wasn't aware that that was why that Asbeston
20 wasn't on the verdict sheet.

21 Q. Mr. Walker, can we go to ACC-341 please? ACC-341
22 is a Major Expense Project approval; right?

23 A. Yes. That's what it appears to be.

24 Q. And it's a Waters & Kraus case for settlement;
25 right?

Cross - Magee

1 A. Yes.

2 Q. It's for \$475,000, and it's in January 2005;
3 correct?

4 A. Correct.

5 Q. Now this is a 60 year-old living mesothelioma,
6 Tommie Williams. He gives his trade as a
7 chipper/caulker/shipfitter at the naval station at the
8 Long Beach Naval Shipyard. Represented by Waters & Kraus
9 which is the same firm that represented Robert Treggett.
10 Gives a little commentary about that verdict. Makes the
11 point that according to the local Los Angeles counsel,
12 that would be Mr. Baronian?

13 A. Yes.

14 Q. That it was a bad jury pool, even worse than
15 Treggett. Right?

16 A. That's what it says.

17 Q. Then it makes this comment -- would you highlight
18 the sentence reading Kelly-Moore and the sentence after
19 it. Kelly-Moore is an asbestos defendant; correct?

20 A. Yes. Was an asbestos defendant in another
21 context. Became an asbestos plaintiff.

22 Q. It's a paint company; right?

23 A. Paint and other products. I believe maybe even
24 some joint compound.

25 Q. When you say it became a plaintiff, you're

Cross - Magee

1 referring to an action that Kelly-Moore brought against
2 Union Carbide based upon Kelly-Moore supplying the fiber
3 in Kelly-Moore paint?

4 A. I am. Yes.

5 Q. Here the reference back to the Treggett case when
6 contemplating the settlement with the same firm that
7 litigated that case. And it says this, "Kelly-Moore,
8 which also took an adverse verdict in Treggett remained
9 in the case at the time of settlement and would have
10 remained in at the trial with Garlock." He's speaking
11 here on this Williams case, isn't he?

12 A. I believe so. Yes.

13 Q. He goes on to say, "This is a particularly
14 negative factor in that Kelly-Moore, which is also a low-
15 dose defendant that made Chrysotile products, concedes to
16 juries contrary to Garlock's position that Chrysotile can
17 cause mesothelioma and states further that to contend
18 otherwise is suggestive of fraud. As it did in Treggett,
19 Kelly-Moore's position severely undermined one of our
20 chief defenses, i.e., the Chrysotile defense in
21 Williams."

22 And then it goes on to give its conclusion as to
23 the advisability of the settlement. It was a
24 particularly awkward circumstance for Garlock in these
25 cases, was it not, that it had Kelly-Moore in there as a

Cross - Magee

1 co-defendant, a Chrysotile low-dose defendant, that was
2 questioning the bona fides of the Chrysotile defense.

3 A. It was. And we understood that that had happened
4 because Mr. Lanier, who was representing Kelly-Moore
5 against Union Carbide required that to be Kelly-Moore's
6 position.

7 Q. In any event, Kelly-Moore took the position, and
8 that didn't help Garlock at all in the case.

9 A. Absolutely not. You're absolutely correct.

10 Q. This is not the first time that co-defendants have
11 shot at Garlock in the context of asbestos personal
12 injury suits, is it?

13 A. I'm sure there were other times.

14 Q. Do you remember paying a contribution claim of
15 Owens Illinois?

16 A. I know that happened.

17 Q. Okay. You remember that at one stage of its many-
18 phased existence in the tort litigation, Owens Corning
19 compiled a very large picture book collecting photographs
20 and identifying materials of everybody else's asbestos
21 products and distributed those books to the plaintiffs'
22 lawyers and asked them to show their clients, and their
23 clients would identify other products. Do you remember
24 that?

25 A. I remember hearing stories about that. Yes.

Cross - Magee

1 Q. Did you ever see the picture book?

2 A. I did not. I heard descriptions of it but I never
3 saw it.

4 Q. I want to ask you about the Phillips case.

5 A. Sure.

6 Q. The judge is familiar with this case because of an
7 adversary proceeding that's been going on. And I don't
8 intend to dwell on it at great length, but I do think
9 that it's important to bring out some aspects of this
10 case. Mr. Phillips -- and if we can have up on the
11 board, please, ACC-332. Let's look at the top of that.
12 This is the MEA with respect to the Phillips settlement;
13 is that right?

14 A. That's correct.

15 Q. Williams Kherkher is the law firm. Trial is
16 listed for March 2009. The amount is \$2.5 million.
17 Let's look at the description in the first paragraph.
18 This is a settlement for a single case. And the author
19 of this document?

20 A. Mr. Hennessy.

21 Q. Which is Mr. Hennessy. The document is signed off
22 on by you and Mr. Grant and Mr. MacAdam, the now CEO of
23 EnPro. Right?

24 A. That's correct.

25 Q. He describes this case as, "the most unique

Cross - Magee

1 factual situation that I have seen in 16 years of
2 managing litigation for Garlock." Right?

3 A. Yes.

4 Q. And you underscored that that was the way the case
5 was presented to you when you were asked to approve this
6 settlement.

7 A. That's correct.

8 Q. Now, what was it that made this case unique? You
9 had a 59-year-old whose asbestos exposures so far as the
10 record revealed all took place when he was a high school
11 student working at his uncle's fabrication shop. Right?

12 A. That's correct insofar as it goes. Yes.

13 Q. And the rest of his career, as far as anybody
14 could determine, involved no contact whatsoever with
15 asbestos. Correct?

16 A. That was the issue that nobody -- we could not
17 determine other parts.

18 Q. The record is he went on to college and he became
19 an accountant. And he worked, ultimately, at a hospital,
20 and he was a high earner. Correct?

21 A. Correct.

22 Q. He came down with that disease at the fairly young
23 age of 59, 58, something like that?

24 A. Very young age. Yes.

25 Q. Another unusual feature of the case was that the

Cross - Magee

1 fiber burdens -- burden on his lungs was examined by
2 actually taking out a piece of his lung and having it
3 tested. Right?

4 A. Right. And the fact that that showed significant
5 crocidolite exposure. Yes.

6 Q. And crocidolite is believed by many to be the most
7 carcinogenic, the most potent form of asbestos fiber of
8 all, correct?

9 A. Yes.

10 Q. And Garlock makes -- rather, was making and
11 distributing at the relevant time a small portion of its
12 output in the form of crocidolite containing gaskets.

13 A. That's right.

14 Q. And those were used principally for high risk
15 environments like acid and chemicals in big industrial
16 complexes and refineries and such. Correct?

17 A. That was my understanding.

18 Q. And this outfit, Triplex, where he worked as a kid
19 on and off or during his holidays or whatever, was a
20 supplier to facilities just like that; correct?

21 A. It was a supplier to facilities in the Houston
22 area; chemical, petrochemical facilities. Yes.

23 Q. So already we've described a pretty unusual case,
24 haven't we?

25 A. We have. We left out one detail. That Triplex,

Cross - Magee

1 his employer, was a Johns-Manville distributor during the
2 applicable time period.

3 Q. A Johns-Manville distributor?

4 A. Yes, sir.

5 Q. Manville, as we heard, had the largest asbestos
6 product share of all. Right?

7 A. That's correct.

8 Q. And let's see if there's anything else we left
9 out. The man had two children and is a surviving spouse.
10 One of his children was getting married. He had had the
11 painful surgery of stripping the tumors off of his lungs.
12 He had almost a million five in special damages; correct?

13 A. Certainly. I accepted Mr. Hennessy's
14 representation of this as a one-of-a-kind,
15 never-before-seen case against Garlock.

16 Q. It was also unusual, wasn't it, in that the
17 activity that, according to evidence, had given rise to
18 this crocidolite exposure was the cutting of gaskets, not
19 the removing of gaskets from degraded gaskets from pipes.
20 Correct?

21 A. That's absolutely correct. Because our view is
22 that it was not possible to get that kind of fiber
23 release from that kind of activity that was evidenced by
24 his lung fiber burden.

25 Q. And for that reason, Garlock undertook significant

Cross - Magee

1 efforts to explore his work history to find out where in
2 the world he could have had the kind of contact with a
3 crocidolite product that would produce that much fiber in
4 his lungs of the crocidolite fiber.

5 A. That's right.

6 Q. And it didn't find anything, did it?

7 A. It didn't find anything that it could produce
8 evidence of. It had -- we speculated about what that
9 might have been.

10 Q. What it did find was that given the Manville
11 relationship, it raised a question whether Manville
12 shipped crocidolite-containing pipe to Triplex that this
13 fellow could have had contact with that could explain his
14 exposures. Right?

15 A. Our assumption was that that was a likely
16 scenario. This was a large Manville distributor, that
17 Manville was a large seller of crocidolite product, and
18 that that crocidolite product would have gone through
19 this facility that was a distributor in an area that
20 would have used lots of crocidolite product.

21 Q. But no witness testified that Mr. Phillips ever
22 had any contact whatsoever with crocidolite-containing
23 pipe, did they?

24 A. To the contrary. Yes, sir. They testified that
25 during that time period that there were crocidolite --

Cross - Magee

1 the Johns-Manville crocidolite materials did not come
2 through their facility, that they were direct shipped to
3 customers.

4 Q. That's called drop shipping; is that right? Where
5 the order comes from Triplex, but Manville delivers
6 directly to the customer?

7 A. It instructs Manville to deliver direct to the
8 site. Yes.

9 Q. That's what the Triplex witnesses testified?

10 A. That's what they were prepared to testify to.
11 Yes.

12 Q. And Garlock suspected and, indeed, knew, did it
13 not, in the course of the case that the Triplex witnesses
14 were cooperating with the plaintiff's attorney?

15 A. At the time we suspected this -- I believe this
16 MEA says "knew," and I've questioned Mr. Hennessy about
17 it. At the time period, Garlock suspected, did not yet
18 know. Later on knew. Later on found the evidence and
19 knew that they were colluding. But just to put it in
20 perspective, no.

21 Q. I didn't use the word colluding. I used the word
22 cooperating, which is not uncommon in litigation, is it?

23 A. I believe when you examine the record here, you
24 would find it's very uncommon of things that went on
25 here.

Cross - Magee

1 Q. Back in March of '09 when this memo came in front
2 of you, the contents of the memo itself alerted you that
3 the Triplex people, the testimony they were offering, was
4 aligning with plaintiff on this issue of was it Manville
5 or was it Garlock? Right?

6 A. We would have had no idea that Mr. Chandler, the
7 lawyer for Mr. Phillips, was actually coaching those
8 witnesses what to say.

9 Q. Well on page 2 of this MEA, page 2 of 3, up in the
10 second paragraph -- let's look at the first paragraph.
11 One of Garlock's theories was that Triplex was deplorable
12 in the working conditions in the shop where Mr. Phillips
13 cut gaskets. Right?

14 A. It would have made sense for that type of
15 crocidolite exposure to have been present in his lungs if
16 there was -- if there was crocidolite fibers in the air.
17 Yes.

18 Q. And he was sometimes charged with sweeping up the
19 fibers after cutting the gaskets; correct?

20 A. That was his testimony. Yes.

21 Q. And let's go to the document -- well, there was
22 testimony from plaintiff's experts that, "failure to
23 clean the plant at Triplex resulted in dust levels
24 multiple times the permitted exposure limit in
25 Texas at the time." Period, end of quote.

Cross - Magee

1 And that testimony by the plaintiff's expert was
2 something that Garlock thought would help it point the
3 finger at Triplex; correct?

4 A. I believe that's what Garlock had hoped. The
5 Triplex witnesses talked about how their facility was
6 pristine and clean, however.

7 Q. And then in the next paragraph, "Despite this
8 statement, it was clear that Triplex was fully
9 aligned with the plaintiffs during the pre-trial
10 stages, getting their employees to testify that
11 Triplex would have cut much more Garlock Blue than
12 JM White gaskets, and even trying to dispute
13 Phillips' testimony that the plant was dirty and
14 not cleaned up on a regular basis." End of quote.

15 And you had that information in front of you when
16 you decided to make that settlement; correct?

17 A. We had that information from Mr. Hennessy, is that
18 that's what he thought. Yes.

19 Q. Down toward the bottom of this page there's this
20 paragraph: "While not designed to test the verdict
21 ranges" -- I'm sorry. Let's go up one. There was a mock
22 trial Garlock held in Houston, correct? A limited mock
23 trial?

24 A. That's right. It's referred to as a "mock trial,"
25 but it was an issues-testing mock exercise. Yes.

Cross - Magee

1 Q. Where you -- where a lawyer stands up and sort of
2 presents a scenario to the mock jury and tests its
3 reaction?

4 A. That's right. There would be enough provided by
5 reading to the mock jurors about what the case was about,
6 and then the particular issue they desired to test would
7 then be played out more fully.

8 Q. And the issue that Garlock was focused on in the
9 mock trial was, was it Johns-Manville or was it Garlock;
10 is that right?

11 A. I believe the issues that were at issue there were
12 what parts of its defense to emphasize and what the
13 effect of emphasizing different parts of its case might
14 have.

15 Q. And this was a limited exercise, and Garlock did
16 not present to the jury what it characterizes here as
17 emotional testimony from the family. So this was not an
18 inflamed mock jury by any means.

19 A. Right. As it says here, it was designed to test
20 what the reactions would be to Garlock pointing the
21 finger at the employer and Johns-Manville.

22 Q. And according to the document just below this, the
23 feedback that came from the mock jury was that most of
24 the jurors were comfortable awarding something in the \$5
25 million range?

Cross - Magee

1 A. That's right. That's what that says.

2 Q. And that's the downside that Garlock was looking
3 at as it contemplated whether to try the case?

4 A. Yes.

5 Q. Now in your direct testimony, you rattled off, and
6 I think there was a chart, I can't remember, or something
7 on the board, of factors that misled Garlock or indicia
8 of its having been misled. And I'd like if we could put
9 up on the board another document. Let me see whether
10 it's in the system.

11 Let's put up ACC-308, please. Now this is a
12 memorandum, isn't it? Correct me if I'm wrong. I don't
13 want to -- I'm not certain of this, but I believe this is
14 written by the Schachter Harris firm?

15 A. Can I see more of it?

16 Q. Sure. Sure. Isn't this a trial evaluation form
17 that's somewhat more elaborate than most of those?

18 A. Looking at this -- yeah, I believe that's what
19 this is.

20 Q. And so if it was prepared in the normal way, that
21 would come from the outside defense counsel; is that
22 right?

23 A. That's right. I'm hesitating now because I can't
24 remember if this would have come from Mr. Harris or in
25 this case from regional counsel, Mr. Mahoney. But

Cross - Magee

1 probably from the Harris Schachter [sic] firm. Yes, the
2 Schachter Harris firm.

3 Q. Well the thing I want to focus on now is in the
4 comments section, the sentence that begins, "it has been
5 disclosed." About four lines up, five lines up at the
6 very end there. And it reads, "It has been disclosed
7 that plaintiffs intend to release Triplex before the case
8 goes to the jury." Do you see that, sir?

9 A. I see that. Yes.

10 Q. And you also had that information in front of you
11 or having had it reported to you before you acted on the
12 decision whether or not to settle the case; correct?

13 A. Certainly, Mr. Hennessy and, I guess, Mr. Grant
14 would have. I wouldn't have seen this but, obviously,
15 they were the ones that were talking to me.

16 Q. There was testimony in the case that Mr. Phillips
17 cut not only gray gaskets -- and those would be the
18 crocidolite ones; right?

19 A. Yeah. That was the allegation. Yes.

20 Q. In fact, his testimony was that most of what he
21 cut was gray; right?

22 A. Yeah. I think something like 95 percent or
23 something. Yeah.

24 Q. I don't think it was that high.

25 A. It was a large majority.

Cross - Magee

1 Q. But he also testified he cut white gaskets too;
2 right?

3 A. That's correct.

4 Q. And those would be the Chrysotile gaskets; right?

5 A. That's right. And I believe he did acknowledge
6 that he cut some Johns-Manville -- I believe it was the
7 Johns-Manville white that he pointed to and the Garlock
8 gray to distinguish the crocidolite and the Chrysotile.

9 Q. I'm not so sure about that. Let's look at
10 ACC-791. And go to page 125. Let me take a look,
11 beginning at line 1 and talking about cutting gaskets.
12 The question on line 5 in terms of the process of cutting
13 those gaskets.

14 Question: "Was there any difference in what you
15 would do in terms of cutting a dark gray gasket
16 versus cutting a white sheet gasket
17 manufactured by Garlock?"

18 Answer: "No, there wasn't."

19 Question: "Your testimony earlier today about the
20 time and process it would take would be the same,
21 regardless of the type of gasket it was?"

22 Answer: "That's correct."

23 Question: "And I may have asked you this before.
24 Do you know whether or not you ever worked with
25 nonasbestos-containing Garlock gaskets?"

Cross - Magee

1 Answer: "I don't know."

2 Then if we go to page 47 -- back up to page 47.

3 Let's see if we can make that legible down at line 18.

4 I'm sorry. We'll start at 14.

5 Question: "And the hundreds of gaskets you're
6 cutting every day, are you telling the ladies and
7 gentlemen of the jury that 60 percent of those
8 were Garlock gaskets?"

9 Answer: "Yes."

10 Question: "What percentage of the Garlock gaskets
11 that you cut every day were the dark gray versus
12 the white?"

13 Answer: "Gosh. Most of them were dark gray. I
14 mean, I don't recall cutting that many white as I
15 did the dark."

16 So as far as that testimony reveals, Mr. Phillips'
17 account was he cut mostly dark Garlock gaskets but he
18 also cut white gaskets, and he doesn't say whether he
19 thinks those are Garlock or Manville. Right?

20 A. In this particular part of it, that's right. I
21 think he actually acknowledges somewhere that he
22 remembers some Johns-Manville gaskets. But, regardless,
23 yes, this was his testimony.

24 Q. I'm sure he did. I don't think there's any
25 denying he cut Johns-Manville gaskets as well as Garlock.

Cross - Magee

1 But the testimony was it was mostly Garlock; right?

2 A. Mostly Garlock and only Johns- -- the key
3 distinction was it was only Johns-Manville chrysotile
4 gaskets and not Johns-Manville crocidolite gaskets, which
5 made the testimony of the Triplex employees very
6 important when they said that those crocidolite products
7 never came through the facility during the time period
8 when Mr. Phillips worked there.

9 Q. I'll tell you I'm not aware of that distinction
10 that he put all the white gaskets on Manville.

11 A. No. I'm not saying he put all the white gaskets
12 on Manville. I'm sorry. I must have misspoken. What I
13 meant to say is that his testimony about the
14 Johns-Manville gaskets was that the only Johns-Manville
15 gaskets he came in contact with were the chrysotile
16 Johns-Manville gaskets.

17 Q. To this day, Garlock has no physical evidence that
18 Mr. Phillips ever encountered a crocidolite product other
19 than Manville and Garlock gaskets. Correct?

20 A. That's very frustratingly true. Yes.

21 Q. And there is no witness who has testified of
22 personal knowledge that Mr. Phillips ever had any contact
23 with any kind of asbestos-containing pipe; correct?

24 A. That's right. All we have is the trust claims and
25 ballots that were filed.

Cross - Magee

1 Q. And let's talk about the ballot. What you have is
2 the ballot cast in the ASARCO bankruptcy; is that right?

3 A. That's one of the things. Yes.

4 Q. And there were three debtors, one of which was
5 ASCARO, the parent; one of which was Lake Asbestos of
6 Quebec or LAQ, a subsidiary; is that correct?

7 A. That's right.

8 Q. And one of which was CAPCO; is that right?

9 A. That's right.

10 Q. And LAQ had been, for a long time, a significant
11 supplier of chrysotile to Garlock for use in its gaskets;
12 correct?

13 A. It had been a chrysotile supplier. That's
14 correct.

15 Q. And the creditors' asbestos personal injury
16 victims who asserted rights in the ASARCO bankruptcy were
17 entitled, were they not, to have a vote as to LAQ if they
18 alleged exposure to chrysotile through Garlock gaskets on
19 the theory that they could establish more probably than
20 not that the fiber came from LAQ. Correct?

21 A. There was a provision that allowed that. That's
22 right.

23 Q. And there was a further provision that allowed any
24 person who had asbestos claim against any of the three
25 debtors to cast a ballot in the other two debtors'

Cross - Magee

1 respects based upon alter ego theories. Correct?

2 A. I believe that's correct. I know there's been a
3 lot of debate about exactly what that meant, but yes, I
4 believe there's language to that effect.

5 Q. Well Mr. Cassada was in the ASARCO case for
6 Garlock, wasn't he?

7 A. I believe that may have been the case. He was in
8 several cases for Garlock.

9 Q. Well, I'd represent to you that we have a record
10 of the appearance of Robinson Bradshaw through Garlock on
11 behalf of Cassada in the Garlock case.

12 A. It wouldn't surprise me. I just couldn't tell you
13 that for sure that occurred.

14 Q. You are aware, aren't you, an essential effort in
15 the reorganization effort in the ASARCO case was whether
16 there was any difference that mattered when it came to
17 the liability side between ASARCO, the parent, and either
18 one of its subsidiaries. Are you aware of that?

19 A. Again, I'm aware that there's lots of disputes
20 about what all that meant, but I can't tell you exactly
21 what those details were.

22 Q. Have you read the Summary Judgment papers in the
23 adversary proceeding?

24 A. I have at some point. Yes.

25 Q. You're aware there was a declaratory judgment

Cross - Magee

1 action filed in the ASARCO bankruptcy by the Asbestos
2 Creditors Committee that asserted, among other things,
3 that CAPCO had been treated as though it were a
4 department of LAQ? Are you aware of that?

5 A. I believe you if that's what you're saying. I
6 don't remember that detail, no, sir, but I believe that
7 that's the case.

8 Q. So will you agree with me that if Mr. Phillips had
9 a good faith basis to allege that he had contact with
10 chrysotile fiber through a Garlock gasket and he had a
11 reasonable belief that the LAQ fiber -- that the fiber in
12 those chrysotile gaskets of Garlock came from LAQ, he was
13 entitled to vote; and he was entitled to vote not only as
14 to LAQ but also as to CAPCO?

15 A. Yeah. I don't dispute that. I think there's some
16 language in the actual ballots that may make that very
17 ambiguous, but I don't dispute that there was a right to
18 do that.

19 Q. It's just that you can't accept the idea that even
20 Garlock's crocidolite gaskets could cause mesothelioma;
21 isn't that so?

22 A. I believe that it is highly unlikely to the point
23 of not being believable that those crocidolite gaskets
24 alone could have caused the kind of fiber burden that was
25 shown from this lung fiber burden analysis.

Cross - Magee

1 Q. The juries from time to time have disagreed with
2 your strongly held view that Garlock's gaskets can't hurt
3 anybody; right?

4 A. They have occasionally disagreed with that,
5 correct, usually in the face of the kind of evidence and
6 the targeting of Garlock that we've talked about here.
7 And in that particular case, it makes it even more
8 unlikely that that's the story, given that in that next
9 case that happened in the Torres case, this
10 Garlock-responsible LAQ, CAPCO ballot was not cast by the
11 same law firm.

12 Q. Well, now, on direct you presented the Torres
13 cases as the follow-on to Phillips that, whereas you had
14 been told Phillips was a once in a lifetime, absolutely
15 unique case; the next thing you know, the same law firm
16 comes forward with what you characterize as a very
17 similar case. Right?

18 A. That's correct.

19 Q. Let's talk about that. Mr. Torres was not a
20 cutter of gasket sheets, was he?

21 A. No. He was a pipefitter.

22 Q. He was a pipefitter. So he undoubtedly removed
23 gaskets from pipes; right?

24 A. That's correct.

25 Q. And he didn't work at a fabrication shop. He

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1 worked at the Union Carbide chemical facility; right?

2 A. That's right.

3 Q. And that's a high risk kind of environment where
4 you might reasonably expect to find crocidolite gaskets
5 in that period of time?

6 A. Yeah. You would have expected to find all kinds
7 of gaskets, including crocidolite gaskets.

8 Q. And he testified, did he not, that he was
9 surrounded by insulation?

10 A. I believe that's right.

11 Q. All right. So, on those facts, it doesn't seem to
12 me to be a strikingly similar case. The only two
13 similarities I see are the law firm and the fact that the
14 allegation is that the fellow handled crocidolite
15 gaskets. Do you see any other similarities?

16 A. That virtually his only crocidolite exposure was
17 to Garlock crocidolite gaskets. That was the similarity.

18 MR. SWETT: Your Honor, I've tried to shorten this
19 examination by X-ing things out. I've gotten a little
20 lost in my notes. If I may just have a minute?

21 THE COURT: Okay.

22 BY MR. SWETT:

23 Q. Now back to the Torres case when you're ready.
24 Now, the Robinson Bradshaw memo that Professor Brickman
25 relied on asserted that, and I'm quoting here, "The only

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1 asbestos-containing products he," and that's referring to
2 Torres, "handled directly were Garlock crocidolite
3 gaskets." That's what his contention was according to
4 the RBH memo, and that's GST-6604 at page 4, but we don't
5 need to call it up. I just give you that reference.

6 In fact, though, Mr. Torres was another one of
7 those plaintiffs who freely disclosed that he was exposed
8 to asbestos from insulation while he was working at Union
9 Carbide as a pipefitter, which are exposures that would
10 comport with your commonsense assumptions based upon your
11 long experience in this business; right?

12 A. We would have expected that a pipefitter would
13 have been exposed to insulation product. Yes.

14 Q. So let's go to GST-4860, please. That's the wrong
15 exhibit. What I want is the Torres transcript of
16 March 4th 2010. I don't seem to be able to put that one
17 up on the board, so let me just refer to GST-4860, which
18 is a transcript, Court's charge and closing arguments,
19 March 4, 2010 in the Torres case. I'm going to point to
20 a piece of Mr. Torres' counsel's closing argument. It
21 begins on page 69, down on line 21. He says this:

22 "Let me tell you why I distinguish, and I know we
23 beat up a lot on Garlock throughout this trial and
24 there's no doubt about that from the evidence.

25 The reason why Garlock is more of a cause is

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1 because the only product that Oscar used hands-on
2 was Garlock, and that product in and of itself
3 contained the most potent asbestos fiber there.
4 There is 500 times, okay?"

5 That's a reference to crocidolite, right, as you
6 understand it?

7 A. It was two references. The reference to the
8 crocidolite, and the reference to the only product that
9 he handled hands-on.

10 Q. Right. And then he goes on to say, "Now while he
11 was at Union Carbide, he's being exposed every day
12 to thermal insulation. I think we talked about
13 snowstorms and that thermal insulation I think
14 contained 15 percent asbestos. And just like
15 Dr. Lemen said, even though Brown and Root didn't
16 make it, manufacture it, there's no evidence that
17 they knew about the dangers. They still, as an
18 employer, have a responsibility. I don't think
19 it's that great but I'll leave that up to you."

20 So the plaintiff's counsel was clearly focusing
21 his case on the Garlock gasket and the crocidolite, but
22 he was also raising the issue for his own client's relief
23 of thermal insulation exposures for which he was urging
24 Brown and Root was responsible. Correct?

25 A. Right, the premises liability. But I think you

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1 read -- and I hope we didn't gloss over those words that
2 he didn't think it was a very big deal or something to
3 that effect.

4 Q. No, I didn't gloss over it.

5 A. You read them. I just want to make sure we heard
6 them.

7 Q. Let me call up the Interrogatory answers. Do you
8 have GST-4926? Can you go to page 10? This is the
9 answer to Interrogatory 6, sub-parts A, D, E and F.

10 "Mr. Torres's occupational exposure to asbestos
11 occurred when he worked from 1975 to 1977 at Union
12 Carbide located in Brownsville, Texas as a
13 pipefitter. Mr. Torres worked with gaskets
14 throughout the plant, including on acid lines. He
15 was continuously exposed to asbestos on a daily
16 basis and, additionally, had periods of large
17 exposure during shutdowns and projects where
18 insulation was stripped off large areas. The
19 asbestos-containing debris was visible and at
20 times created clouds of dust.

21 "Mr. Torres also worked around insulators during
22 the turnarounds, shutdowns and general maintenance
23 projects. In areas where Mr. Torres was working,
24 insulators routinely cut, sawed, fabricated and
25 mitered asbestos containing-pipe insulation.

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1 These actions created dust that was thick and
2 heavy, and Mr. Torres was working in very close
3 proximity to where insulators were working and
4 creating dusty, cloud-like conditions." Do you
5 see that, sir?

6 A. I do see that. Yes.

7 Q. Were you aware of those disclosures before now?

8 A. I'm not sure if I was specifically aware, but I
9 knew that was what Garlock was trying to demonstrate at
10 trial.

11 Q. You're aware that Mr. Torres identified many, many
12 co-workers who could testify to the dusty conditions
13 created by the asbestos insulation?

14 A. I can't remember how many. It may have been
15 enough to fill up a phone book but I can't remember
16 exactly how many.

17 Q. Let's look at 11 and 12. At the top, there's a
18 reference to work, to co-workers or other product
19 identification witnesses and he's given what -- he's
20 given several -- it flows on to the next page, but it's
21 not exactly the phone book, is it?

22 A. No, that's not. It's got a reference to
23 deposition exhibits.

24 Q. Talking about the deposition. Let's go to GST- --

25 A. I was just trying to read the rest of it.

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1 Q. I'm sorry. Please put it back up for Mr. Magee.
2 It was on page -- yeah. Here. Just for clarity, let's
3 go to the second page and enlarge the text below the list
4 of names.

5 It says, "The above-listed witnesses worked at
6 Union Carbide during the years Mr. Torres worked
7 on the premises. They will testify regarding
8 products at the facility. The work done by the
9 insulators at Union Carbide, lack of warnings
10 provided to Union Carbide employees regarding the
11 dangers of asbestos, dusty conditions on the Union
12 Carbide premises, brands, manufacturers and types
13 of asbestos-containing materials used and
14 insulators' work done around other occupations."

15 And by my count -- you can minimize that now --
16 I'm counting 11 product ID'd -- witnesses identified in
17 the Interrogatory answers; right?

18 A. Right. As identification witnesses who had
19 testified, obviously, in connection with the premises
20 case against or in connection with the Union Carbide
21 claim.

22 Q. For the identification of, among other things,
23 insulation products?

24 A. For which the allegation would have been that
25 Union Carbide was responsible for those. Right.

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1 Q. And that gave Garlock something to work with,
2 didn't it?

3 A. It did.

4 Q. Yeah. I was going to ask you. There was a
5 reference in there to the previous answer to his cutting
6 pipe. Does that suggest to you the possibility of a
7 crocidolite-containing product?

8 A. It certainly would have, and Garlock would have
9 tried to make that point. And you heard the way the
10 argument was made about how -- about them being -- I
11 can't remember the quote but that he -- that the lawyer
12 didn't think they meant a lot.

13 Q. Well he was a pipefitter and his job involved
14 pulling out gaskets; right?

15 A. That's correct.

16 Q. And he was saying he had hands-on --

17 A. From time to time.

18 Q. -- hands-on contact with the gaskets.

19 A. Right. But the only hands-on product. So he
20 didn't have -- he got to those gaskets without having
21 hands-on contact with the insulation.

22 Q. There's no expectation he would have cut pipe, is
23 there?

24 A. I'm not talking about pipe right now. I'm talking
25 about the insulation he would have had to get through to

Cross - Magee

1 get to the gasket.

2 Q. I'm talking about crocidolite. The most likely
3 alternative source of crocidolite was in the pipe, wasn't
4 it?

5 A. That was one possibility.

6 Q. Can you name an insulation product commonly in use
7 in Texas during this period of time that contained
8 crocidolite?

9 A. I believe there were some that were part amosite
10 and part crocidolite.

11 Q. Can you name one?

12 A. Not as I sit here. No, sir.

13 Q. Let's go to the deposition GST-4639 and page 69,
14 line 17.

15 Question: "I've spoken with other pipefitters at
16 Union Carbide who described the conditions when
17 the insulation was cut as looking like a snowstorm
18 or like it was snowing. Is that how it looked to
19 you?"

20 Answer: "You see the sun -- that the sun is over
21 there, and then you see a lot of little things."

22 Question: "And that would be particles of dust
23 floating down through the air?"

24 Answer: "Yes. A little bit, yes. And wherever
25 the insulation was, that type of pipe insulation

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1 was, that's how it was."

2 Question: "Even if they weren't cutting it, even
3 if the insulation was just in place, the air would
4 be full of that dust?"

5 No. Just when they cut -- I'm sorry.

6 Answer: "No. Just when they would cut."

7 So this is not a man who was pulling punches on
8 his exposures to insulation, was he?

9 A. I guess it's subject to interpretation. If I read
10 that back from the previous page, I would -- that didn't
11 sound like a description of a snowstorm to me. It
12 sounded like, depending on the way the light was
13 catching, the dust to be able to see the particles.

14 Q. And look at GST-4638, page 50, line 7. "What did
15 you see the insulators doing?"

16 "Well just looking, just watching what they were
17 doing. They were covering the pipes."

18 "How far were you from when -- from them when they
19 were covering the pipes?"

20 Answer: "20 feet."

21 Question: "Were the insulators above you or below
22 you or next to you?"

23 Answer: "Well, beside. But it was different
24 because they were above and they were below."

25 Question: "Did you observe the dust being created

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1 when they were installing pipe coverings?"

2 Answer: "Yes."

3 Question: "Could you see the dust?"

4 Answer: "Yes."

5 "Did you breathe the dust?"

6 Answer: "Well when the wind would come this way,
7 yes."

8 Question: "How long would you be around
9 insulators insulating pipes?"

10 "Well we would work there, like, around two or
11 three days a week but we would be there eight
12 hours."

13 So, again, that doesn't sound to me like a man
14 who's pulling his punches with regard to insulation
15 exposures. Does it sound that way to you?

16 A. I think he's hedging some. Yes.

17 Q. Now, Garlock complains that about the same time he
18 was being deposed, I think you said it was the day before
19 a ballot went in for Mr. Torres with Babcock & Wilcox.
20 Right?

21 A. That's correct.

22 Q. Are you aware that that was a site list claim?
23 That what it asserted was he worked at the Union Carbide
24 plant during a particular period of time?

25 A. Alleging exposure while there to the Babcock &

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1 Wilcox products.

2 Q. The information he added to the form was the sites
3 he worked, right? Rather, his lawyers did. Correct?

4 MR. CASSADA: Then why don't you show him the
5 form?

6 THE WITNESS: We can disagree about what it meant,
7 Mr. Swett, but it said he had exposure to a Babcock &
8 Wilcox product, and he was voting in the Babcock & Wilcox
9 product bankruptcy says.

10 MR. SWETT: The question to him at deposition --
11 let's look at GST-4926.

12 MR. CASSADA: Excuse me. Can we clarify
13 something? I believe you said "canceled ballot." He
14 talked about it being a work site.

15 MR. SWETT: I'm sorry. I created a muddle which
16 Mr. Cassada's pointing out. I said ballot. It was a
17 submission to a trust that I characterized as --

18 THE WITNESS: In my testimony it was a trust
19 claim. I'm sorry. I should have listened. I didn't
20 hear you say ballot.

21 BY MR. SWETT:

22 Q. My apology. It was a submission to a trust. It
23 was what I could call a site claim and you and I were
24 disagreeing about what the parts of that was.

25 A. I believe it was actually paid too. Yes.

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1 Q. But GST-4926, at 91, lines 5 through 7. That's
2 the wrong document. We'll have to come back. I don't
3 want to take the time now. I'm going to zero in on the
4 question. Let me ask you if the question to him in his
5 deposition was, "Do you remember -- do you recognize the
6 name Babcock & Wilcox?" And the answer was "no." That
7 would not necessarily be inconsistent with his lawyer
8 having submitted a trust submission the day before for
9 him, would it?

10 A. He would have submitted that trust submission
11 without conferring with his client about that exposure?

12 Q. His client was a Spanish-speaking pipefitter who
13 may well not have known the name of the corporation
14 responsible for the boiler that he had contact with;
15 right?

16 A. Well in that case the corporation and the name of
17 the boiler were the same: Babcock & Wilcox.

18 Q. You take it for granted that there could be no
19 reasonable scenario in which the lawyer puts in the trust
20 claim as a site list claim on day one, and on day two the
21 worker answers no when asked does he recognize the name
22 Babcock & Wilcox. You see no way of reconciling those
23 two things?

24 A. I would have thought, Mr. Swett, that if the
25 lawyer had just filed that the day before and he heard

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1 his client testify to that, that he would have cleaned
2 that up and made it clear that that -- that he did
3 recognize it enough to authorize the filing of the trust
4 claim.

5 Q. What if the lawyer at the deposition didn't know
6 about it?

7 A. Well then he wouldn't have been able to clear that
8 up. Not at the time anyway.

9 Q. Okay. Let's move on. Do you agree with me that
10 one of the most potent disclosures from the standpoint of
11 Garlock's defense that a plaintiff could give is that he
12 personally cut crocidolite-containing -- that he
13 personally cut transite pipe?

14 A. If the type of the pipe -- the manufacturer of the
15 pipe was known or demonstrated, yes, that would have been
16 excellent evidence for Garlock to have.

17 Q. Let's take a look at GST-1853. This is the
18 deposition of Raymond Beltrami. We'll go to page 76.
19 I'm at line 2.

20 Question: "Would you have to cut the cement pipe
21 and transite pipe?"

22 Answer: "One of the biggest reasons we cut the
23 transite asbestos pipe, we were just getting the
24 sewer system in on Long Island and the contractor
25 who installed the sewer systems would break the

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1 pipes in the process of trying to install manholes
2 and sewers."

3 Question: "Were you then responsible for
4 repairing the pipes?"

5 Answer: "Me and whoever was available, the
6 nearest people to do the job."

7 Question: "Do you know who manufactured any of
8 the asbestos cement pipe that you would repair?"

9 Answer: "Yeah. I know Johns-Manville and
10 Certainteed."

11 Question: "Do you know who manufactured any of
12 the transite pipe?"

13 Answer: "The only one that I believe that was
14 transite pipe was Johns-Manville."

15 So there he gave you the cutting of the pipe and
16 the name of the manufacturer; correct?

17 A. That's correct. That would have been, obviously,
18 sufficient to have identified Johns-Manville.

19 Q. And an extremely dangerous crocidolite-containing
20 product; correct?

21 A. Yes. Again, this -- I'm not -- as I sit here, I'm
22 not intimately familiar with the Beltrami case but
23 Mr. Turlik would have been, so I'm sure you must have
24 questioned him about this.

25 Q. Let's talk about the trusts. When the trusts put

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1 out TPDs in the bankruptcy court and then they became
2 operative, a lot of them adopted what we called the "site
3 list." Right?

4 A. Right. That's my understanding.

5 Q. And Bates White was following those developments,
6 was it not?

7 A. As you know from Dr. Bates' testimony, there was a
8 person at Bates White who did that. I'm not sure when
9 you say, as I know. I'm not sure when that was or how
10 that connects to the time period you're talking about.
11 But certainly there was somebody there who was an expert
12 about that.

13 Q. And you had the RBH lawyers all over the
14 bankruptcies and the TDPs, didn't you, by this time into
15 the late 2000s?

16 A. By the 2007-2008 time period. Yes, sir.

17 Q. And did you ever tell your defense team -- and
18 Dr. Bates was a consultant to the defense effort, not
19 just an estimator, right?

20 A. That's right. I talked to Dr. Bates about things
21 that would help us in the defense of the case.

22 Q. And did you instruct your defense team, either at
23 Garrison or out there in the field to start making use of
24 the site lists to get leads on where amosite-containing
25 insulation products might have been present?

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1 A. I would have hoped that they would have gone to
2 any site list that they knew was available to try to get
3 leads about the real cause of the claimant's disease.

4 Q. I'm going to come back to the mass reporting side
5 of these matters in one narrow respect. You disclosed at
6 a certain point before the mid-2000s that once you
7 adopted Dr. Bates -- the estimation approach urged upon
8 you by Price Waterhouse and you engaged the expert, and
9 that was Dr. Bates, and he had made forecasts and the
10 forecast would change from time to time. Right?

11 A. Well they were updated regularly. Yes. I'm not
12 sure one ever changed. A new one was presented that
13 updated the previous one. Yes.

14 Q. He had to take account of the spending of money on
15 the front end of the time span and the additional time on
16 the back end of the time span?

17 A. When I talked about that at my deposition, that
18 was how it was updated, quarter to quarter. When he was
19 only doing it annually, he would do a new forecast every
20 quarter until that process where he started doing it
21 annually where he would take the data and do a brand new
22 forecast from the data.

23 Q. And in the first year when he worked with you-all,
24 you were still in the mode of trying to match indemnity
25 outflows to claimants to insurance receipts from the

Cross - Magee

1 insurance in place that you have, right, and other
2 insurers?

3 A. I was always in that mode. I was always trying to
4 -- try to keep -- the cash flow was always on my mind. I
5 was always trying to have as little net cash flow after
6 insurance as possible.

7 Q. And up to a certain point when you would account
8 for a settlement instead of charging it to earnings
9 through the profit and loss statement, you could charge
10 it to an insurance receivable and add to the accounts
11 receivable and so cash would go down and the receivable
12 would go up and it would all balance. Right?

13 A. As long as there was still uncommitted insurance.
14 That's right.

15 Q. But as Dr. Bates' estimates grew, that would, in
16 fact, require you to match the forecasted liability to
17 the insurance receivable by adding to that receivable;
18 correct?

19 A. Well, that is technically correct. When that
20 happened significantly, was when we went to a point
21 estimate. Obviously, that caused it a -- but, yes, that
22 would have happened. Whatever the low end would have
23 been was what we would have had to book as a financial
24 statement liability.

25 And there came a time in 2006 when we went to a

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1 point estimate that caused an additional significant
2 amount to have to be booked between what had been the low
3 end and what was the point estimate.

4 Q. And at some point the estimate was of such
5 magnitude that all of the available insurance was in
6 effect earmarked for the forecasted liability; correct?

7 A. That's right. That happened sometime in 2006, I
8 believe.

9 Q. After that, any further increase in Dr. Bates'
10 estimate would flow through the profit and loss statement
11 and hit earnings and therefore stockholders' equity.
12 Correct?

13 A. It would hit earnings and it was on a separate
14 line item on the income statement. That's correct.

15 Q. But the result would be to reduce income, net
16 income.

17 A. Yes. It would have -- the bottom line income
18 number. It was a separate number. It would have had
19 that impact.

20 Q. So, in effect, the stockholders absorbed that
21 expense.

22 A. I don't believe that's accurate.

23 Q. Well through their equity and the income.

24 A. If it affected equity. But if it had affected
25 equity, you know, their value was affected by the stock

Cross - Magee

1 price and not by the equity account on the balance sheet.

2 Q. I'm looking at the -- well, let's leave that. At
3 any rate, it hit stockholders' equity through the medium
4 of the profit and loss once you couldn't book it through
5 an insurance receivable anymore. Right?

6 A. Yes. It was an item on the balance sheet, and it
7 was separately identified on the balance sheet.

8 Q. And since you were working off a target around a
9 budget, you could predict with a fair degree of
10 confidence when the point would arrive when you'd have to
11 change the accounting in the fashion that I just
12 described and when it would begin to hit earnings and
13 equity. Correct?

14 A. Yes. There would always have been an ability to
15 try to predict that. Like everything else, we were
16 trying to predict something that was, you know, very
17 difficult to predict.

18 Q. At the end of 2005 and the 10-K for that year,
19 coming out at about March 30th or thereabouts of the
20 following year, you were able to say, were you not, that
21 it was EnPro's expectation that within nine months to 18
22 months that point would arrive. And after that, upward
23 changes in Dr. Bates' forecasted liability would hit
24 earnings and the equity again. Correct?

25 A. I believe that's correct that we tried to forecast

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1 it then. And we demonstrated that we were incorrect, and
2 it actually happened sooner than that.

3 Q. It happened, in fact, about the second quarter of
4 2006, didn't it?

5 A. I'd have to look, but about that time. Yes.

6 Q. That corresponds roughly to when you adopted the
7 point estimate?

8 A. It did. Yes.

9 Q. And some of the Garrison guys going out there and
10 talking to the plaintiffs' lawyers made use of the
11 dwindling of the uncommitted insurance as an attempted
12 negotiated tool to see if they could persuade the
13 plaintiffs' lawyers to reduce their demands on Garlock;
14 correct?

15 A. I believe they tried to do that. Yes.

16 Q. And one of the lawyers who received that message
17 and in this instance through Mr. Glaspy was Mark Iola
18 whose clip we saw earlier today; right?

19 A. As far as I know. I don't know -- I don't know
20 how that was actually communicated, but I do know that
21 that was something that some communicated. Some said it
22 had some success and others said it backfired and that it
23 caused the lawyers to try to get more sooner on the
24 theory that it was going to run out. I think we found
25 out on net, as long as there was real insurance still

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1 there, it wasn't particularly effective.

2 Q. But in Mr. Iola's case, and he was acting for
3 Waters & Kraus, one of the significant firms that you
4 dealt with, he undertook a due diligence exercise. He
5 got financial information. He took the message
6 seriously. And in fact, he did cause Waters & Kraus to
7 reduce its -- temper its demands on Garlock, did it not?

8 A. You know, Mr. Glaspy could tell you exactly how
9 that played out. I believe that might be the case but
10 there were small reductions.

11 Q. And then there were other firms, as you said, that
12 said, well if you're running out of insurance, I better
13 get my claims perfected and collected sooner. Right?

14 A. That was the point I was trying to make. It had a
15 mixed impact. Yes.

16 Q. A mixed impact. I think your comment before was
17 like so many strategic decisions in asbestos litigation.
18 Correct?

19 A. I don't remember saying that, but that -- if I
20 said that, I was -- I was accurate when I said that.
21 Yes.

22 Q. Okay. Now when Dr. Bates was engaged, you were in
23 the midst of dealing with -- you were in that 2004-2005
24 particularly troubled time, and you were dealing with the
25 fallout from the number of bankruptcies that had been

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1 filed in the early part of the decade; correct?

2 A. Well there were two parts of that question. I'm
3 not sure what you meant by "particularly troubled time"
4 but, yes, we were dealing with the fallout from those
5 bankruptcies.

6 Q. What I just meant was, we went through events in
7 2004 and 2005 and some of the big verdicts and the
8 difficulty surrounding that earlier today. That's all.

9 A. I see.

10 Q. That's all I meant.

11 A. I just wondered what the context was. Thank you.

12 Q. In any event, Dr. Bates shared the view that, with
13 these bankruptcies, the plaintiffs' lawyers were scaling
14 up their demands on solvent defendants like Garlock.
15 Correct?

16 A. Well, we already knew that.

17 Q. You knew that from your own painful experience?

18 A. We knew that part of what he had told us. Yes.

19 Q. But he also told you, in effect, not to worry.
20 There are going to be reorganizations. They're going to
21 create trusts. The trusts will start to pay claims. And
22 if not, eliminate this upward pressure, it will at least
23 reduce it and you'll experience some relief through the
24 trust payments. Correct?

25 A. I don't believe that's how Dr. Bates conveyed

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1 that, "not to worry."

2 Q. Okay. Tell me -- but the substance of the message
3 was you're going to get some relief when the trusts are
4 up and running. That was certainly conveyed to you by
5 Dr. Bates; right?

6 A. It was. And in his scenario models, it was at
7 some point the trust would be up and running. And what
8 he did -- I believe I testified what he did educate me on
9 was just how much money was going to be available for
10 claimants from those trusts and how significant that was.
11 I was not aware of that prior to that.

12 And then we all knew that ultimately they would be
13 up and running and that there would be -- we assumed --
14 he assumed and I assumed there would be relief from that.
15 I had not anticipated that the relief was going to be
16 30-plus billion dollars.

17 MR. SWETT: Your Honor, we can open the courtroom
18 at this point if you'd like.

19 THE COURT: Okay.

20 MR. CASSADA: There will be some redirect where I
21 ask things that probably would involve a closed
22 courtroom.

23 THE COURT: Well, let's leave it closed. We can
24 hopefully get this done fairly quickly.

25 BY MR. SWETT:

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1 Q. In any event, the relief anticipated by Dr. Bates
2 did not happen, did it?

3 A. It had not happened by -- at the time we filed.
4 That's correct.

5 Q. Dr. Bates never did point out to you, did he, any
6 time in the past when, in the context of asbestos
7 litigation, any solvent defendants' settlement values had
8 gone down upon the reorganization of some previously
9 bankrupt defendant?

10 A. He didn't volunteer that. I don't believe I was
11 smart enough to ask. But, no, we did not have that
12 conversation.

13 Q. Now Dr. Bates believes that with the trusts having
14 opened up the payment cue and getting money out there in
15 large amounts beginning in 2007, he still anticipates
16 that that relief will come. Correct?

17 A. Actually, in fact, as I sit here -- and remember I
18 believe -- I can't remember which report it's in, but I
19 believe he demonstrated through a test in his report that
20 with respect to claimants who file their trust claims
21 before they pursue their tort claim that they, on
22 average, get smaller amounts from the tort defendants.
23 So he has a test where he can test to see whether that's
24 true or not.

25 Sitting here, I can't describe for you exactly how

Cross - Magee

1 that test works and what it shows, but I think I may have
2 testified incorrectly when I said there was no effect
3 from that. I think -- I think Dr. Bates can demonstrate
4 through a test that there was some effect happening
5 because of that.

6 Q. It didn't happen, to your knowledge, before the
7 bankruptcy; correct?

8 A. That's what I'm trying -- I think he demonstrates
9 from that test that it had happened with respect to
10 claims where trust forms were filed before the tort claim
11 was pursued.

12 Q. I'm not --

13 A. I was not seeing that that was happening. I
14 believe he's tested it to show that it was in fact
15 happening to some extent.

16 Q. I'm not going to quarrel with you. I'm not
17 accepting his test. But as far as you were aware, before
18 the bankruptcy filing that wasn't showing up in Garlock's
19 numbers.

20 A. And that's -- that was my testimony. That's what
21 I meant to be testifying to. I was not aware that it was
22 showing up. I was afraid I may have said it wasn't
23 happening, and I didn't want to contradict the fact that
24 that test may have showed it may have been happening.

25 Q. All along during his estimates provided to EnPro

Cross - Magee

1 for financial purposes, Dr. Bates' -- the range he
2 characterized as the reasonable and probable gave effect,
3 did it not, to an assumption that there would be downward
4 pressure on Garlock's settlement values by reason of
5 trust payments?

6 A. Well, what it did, that assumption was present in
7 his range. At the high end of the range it had very
8 little effect. At the low end of the range it had a more
9 significant effect. And you probably did ask Mr. -- --
10 excuse me, ask Dr. Bates about exactly where those points
11 were. I can't recall, sitting here. But I know that at
12 the high end of his range, and that was one of the
13 reasons that the range continued to broaden was because
14 -- because including some scenarios where it had a less
15 effect, rather than a more significant effect. So, yes,
16 that was -- that was embedded in the estimate. At the
17 low end it would have more effect, and at the high end
18 where it would have very little effect.

19 Q. And in your internal estimates, your management
20 targets, you also gave effect to such an assumption, did
21 you not?

22 A. Well, I believe I testified about what I was doing
23 in the top-down nature of my internal estimates. But the
24 fact that we made sure that those internal estimates were
25 consistent with Dr. Bates' equally likely range means

Cross - Magee

1 that that was a factor to some extent. Remember, my
2 internal estimates were top-down based on how much can we
3 reduce our payments year after year given the incidence
4 model and given what I hoped we could -- what I hoped
5 that we could accomplish through negotiations. And
6 certainly, I would have hoped we could accomplish through
7 negotiations some impact from the fact that these
8 claimants would be recovering significant dollars from
9 the trusts.

10 Q. And Dr. Bates is convinced today that that relief
11 is still in the offing and will be realized increasingly
12 as the years go forward. Correct?

13 A. He's done some economic tests of incentives that
14 have caused people to act. And the fact that there's
15 significant dollars there in their economic best
16 interest, claimants will pursue those dollars from the
17 trusts now that those dollars are flowing.

18 Q. But Garlock has no intention of returning to the
19 tort system, does it?

20 A. No, it does not. I think I testified about what
21 we hoped to accomplish through the bankruptcy filing.

22 MR. SWETT: Your Honor, I said earlier that I was
23 going to come back to Fowers. With your leave, instead
24 of reading stuff, I'm just going to cite some pages out
25 of Fowers' deposition --

Cross - Magee

1 THE COURT: All right.

2 MR. SWETT: -- which is GST-6219, at 63, lines 12
3 through 18; 105, lines 7 through 20; and in the same
4 deposition at 15, line 22 through 16, line 22. That
5 testimony has to do with insulation in Mr. Fowers' bunk
6 lagging exposure on the USS Arizona at Pearl Harbor.
7 But, I will spare Mr. Magee the ritual of going through
8 the readings and sum up this way.

9 Q. You just testified that Garlock's goals throughout
10 the years during your tenure was to reduce net cash
11 outflows as much as it could every year for asbestos;
12 correct?

13 A. Well I think I testified that -- I don't want to
14 quibble with your words; I know we've been here a long
15 time. Its goal was to minimize that. The insurance was
16 declining. So there could be significant reductions in
17 the amount of cash outflow without a commensurate
18 reduction in the net outflow. But it certainly was our
19 intention to make those numbers as low as we could. Yes.

20 Q. And thereby to prevent the asbestos problem from
21 eating into stockholders's equity?

22 A. Well, mostly it's the income, I mean to eat into
23 the income. In a year, to the extent we had income, it
24 would have been offset on a net basis by the amounts of
25 the net asbestos outflow. It was not covered by

Cross - Magee

1 insurance.

2 Q. And in the tort system you tried many strategies
3 for achieving that goal, didn't you? You had -- Garlock
4 had tried the inventory settlements and they proved
5 disastrous; right?

6 A. I believe "disastrous" was your word. But they
7 were very unsuccessful, yes, sir.

8 Q. You, from time to time, engaged in aggressive
9 litigation maneuvers by the Waters & Kraus removal into
10 the federal system of their mesothelioma cases. Right?

11 A. That was an aggressive tactic. I agree with that.
12 That's the only one I'm aware of and that happened before
13 my tenure.

14 Q. You devoted significant effort and resources to
15 the legislative efforts to get the National Fair Act
16 passed and other similar measures for changing the rules
17 by legislation; correct?

18 A. Absolutely. Legislation designed about making the
19 asbestos compensation system more fair. That was a key
20 -- that was a key focus of mine personally.

21 Q. And the Fair Act didn't pass; correct?

22 A. It did not. But I believe it had an excellent
23 impact on the recruited nonmalignant claims and the
24 abuses that were going on in connection with those. And
25 we saw what happened in Texas and -- I'm sorry, in Texas

Cross - Magee

1 and in Mississippi as a result of all that.

2 Q. And on the rebound, we saw what happened in
3 California when the Texas lawyers moved out there and
4 started bringing their cases in front of California
5 juries; correct?

6 A. Right. Now we see what's happening after the
7 O'Neil decision with the lawyers leaving California.

8 Q. It's a dynamic situation and there's a lot of
9 change all the time.

10 A. Absolutely. I believe I've been consistent and
11 very clear on that many times in my deposition. In fact,
12 when we talked about these estimates, I was talking about
13 how reluctant I was to talk about -- to put estimates in
14 our financial statements and SEC reports, because it's a
15 very dynamic place where lots of changes happen and they
16 happen regularly. The only thing you can predict is that
17 change is going to happen.

18 Q. And yet your goal in the case -- one way of
19 putting it is you want to return to the mesothelioma
20 settlement environment that existed in the 1990s, isn't
21 that so?

22 A. That's not what I've said, sir. I believe I said
23 we wanted to have a system where they were resolved
24 fairly. We believe that you can look to the '90s to see
25 how they would be valued when they were resolved fairly

Cross - Magee

1 with all the information in place.

2 Q. A couple of things about Grace. You mentioned
3 that there were two things about the Grace bankruptcy
4 that made you sanguine, my word, about Chapter 11 as an
5 option for achieving the goal that you had not been able
6 to achieve all those years in the tort system. Right?
7 There were two aspects of Grace that stuck out in your
8 mind?

9 A. Two important -- I believe Mr. Cassada asked me
10 what we hoped to achieve in this bankruptcy. Part of my
11 answer was that we had hoped to achieve in this
12 bankruptcy what Grace had achieved in its bankruptcy with
13 respect to those two aspects. Correct.

14 Q. And one aspect of that was the adversary
15 proceeding that was litigated in front of Judge
16 Fitzgerald having to do with that attic insulation
17 product, Zonolite?

18 A. That's correct.

19 Q. The Zonolite dispute was litigated in the format
20 and under the rules of an allowance proceeding. Are you
21 aware of that?

22 A. Generally. I've read the opinion. I'm not sure I
23 -- I know it was in the context of that bankruptcy case.

24 Q. And it was also in the context of a putative class
25 action; correct?

Cross - Magee

1 A. I was not aware of that; I probably should have
2 been. I've read the opinion.

3 Q. And if that's right then the claimants would have
4 been in front of the Court with their product, I'm sorry,
5 their property damage claims arising from Zonolite and
6 litigating their rights in their own stead. Not in an
7 estimation context but in actual allowance proceedings.
8 Correct?

9 A. That's right. Allowance proceedings that we began
10 this case asking to have. Yes.

11 Q. And you're aware that there's substantial case law
12 outside of the bankruptcy context that pretty well dooms
13 class action proceedings as they pertain to asbestos
14 personal injury claimants, aren't you?

15 A. I'm aware of that history. Yes.

16 Q. Now the other thing you mentioned about Grace was
17 that the Committee struck a deal with the debtors that
18 left a lot of equity in the hands of the shareholders;
19 correct?

20 A. That's correct. But I really think -- I want to
21 emphasize to you the importance before you leave it. The
22 Zonolite opinion was that the court in that case gave
23 great credence and quoted from Dr. Elizabeth Anderson
24 about her carcinogen risk assessment with respect to the
25 Zonolite product that said that that product was not a

Cross - Magee

1 substantial contributing cause to asbestos disease. We
2 hope the Court will get to hear from Dr. Anderson in this
3 case so that she can explain what that means and why
4 that's important here.

5 Q. But you've acknowledged that class action
6 proceedings in which the claimants themselves litigate
7 the merits of their personal injury tort claims are
8 pretty much ruled out under existing case law in this
9 country?

10 A. I would hope that --

11 MR. CASSADA: I object to the question. He's
12 asking him for an opinion on a legal principle that does
13 not apply in this case.

14 THE WITNESS: I hope that --

15 THE COURT: Sustained.

16 MR. SWETT: He injected it on direct and I'm just
17 pointing out that it's a rather different context. But
18 with the objection having been sustained, I'll move on.

19 BY MR. SWETT:

20 Q. The other thing that attracted you to the Grace
21 model of Chapter 11 reorganization for an asbestos
22 defendant was that much equity, according to you, remains
23 in the hands of the shareholders. Correct?

24 A. As a matter of record, I believe their equity is
25 valued right now at about \$4 billion.

Cross - Magee

1 Q. Do you know how much value Grace has contributed
2 or promised to contribute to an asbestos trust as the
3 consideration is measured today?

4 A. Well that depends on whether you count the Sealed
5 Air contribution.

6 Q. Let's just take Grace's portion.

7 A. I can't remember the exact number. I know it's a
8 25 to 35 percent of what Dr. Peterson estimated the
9 liability to be.

10 Q. You also know it's on the order of a couple
11 billion dollars; don't you?

12 A. I believe it's more than one but less than \$2
13 billion. I could be wrong about that.

14 Q. And then you spoke --

15 A. Some of that would depend on what that equity is
16 worth now, since that equity has increased in value.

17 Q. It has indeed. And let's suppose that --

18 A. Since some of the consideration was Grace equity.

19 Q. That's Grace's contribution; right?

20 A. Right. The only point I'm trying to make is it
21 depends on when you value that consideration. Obviously,
22 it would be worth more now than now than at the time it
23 was agreed to.

24 Q. If it's about \$2 billion, Garlock doesn't have
25 that kind of money to contribute to a trust does it?

Cross - Magee

1 A. No, sir. That's not the context I was talking --
2 I was talking about the contribution relative to the
3 estimate of what its liability was. I don't think
4 anybody -- anybody would pretend to allege that Garlock's
5 responsibility was anywhere near the responsibility of
6 W.R. Grace.

7 Q. Did you know that W.R. Grace styled itself as a
8 peripheral defendant at the outset of its bankruptcy?

9 A. I did not know that. That's interesting.

10 Q. Okay. Now you also spoke of the Sealed Air
11 contribution to the Grace trust, did you not?

12 A. I did.

13 Q. Okay. And you know what that is in value?

14 A. I know that at one point the value was over a
15 billion dollars.

16 Q. And that arises out of the settlement of the
17 claims against Sealed Air in the nature of fraudulent
18 conveyance and successor liability derivative claims like
19 that?

20 A. Correct. That was done early in the case. Yes.

21 Q. You're aware that the Committee in this case,
22 along with the FCR, have proposed to bring suit against
23 EnPro to prosecute claims of that nature?

24 A. I'm not sure whether they're of the same nature.
25 Certainly, I'm aware that the Committee has proposed to

Cross - Magee

1 bring these kinds of claims.

2 Q. You're aware that EnPro doesn't have a billion

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Redirect - Magee

1 dollars if you take away Garlock to contribute to a
2 trust, aren't you?

3 A. I don't know that. I can't tell you how much
4 EnPro has and Garlock has or not. You can look at the
5 financial statements of those companies and make that
6 determination yourself.

7 Q. Thank you, Judge. Thank you, Mr. Magee.

8 THE COURT: Mr. Cassada.

9 MR. CASSADA: Thank you Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. CASSADA:

12 Q. Mr. Magee, let's go back to W.R. Grace for a
13 moment. Mr. Swett was asking you about Grace and its
14 role in asbestos litigation. Now, W.R. Grace, that is
15 the company that poisoned the town of Libby, Montana?

16 A. There were allegations to that effect, yes,
17 Mr. Cassada, but I wouldn't engage in that. Yes, there
18 were allegations to that effect.

19 Q. It's the same company that Dr. Peterson testified
20 is the most high-profile defendant in asbestos
21 litigation.

22 A. I do know that that's what Dr. Peterson said about
23 it. I didn't know anybody alleged they were a peripheral
24 defendant, and I probably shouldn't have chuckled when I
25 heard that. But, yeah, that's what Dr. Peterson said

Redirect - Magee

1 about them.

2 Q. Now when Grace proposes a plan with a little bit
3 over \$2 billion in it, now that covers claims from 2000
4 to 2010 that Garlock has already paid; correct?

5 A. Oh, yes. Garlock remained in the tort system and
6 continued to pay claims for a decade after W.R. Grace was
7 out of the tort system.

8 Q. And a huge part of the compensation that's going
9 in is going in to pay those claims; right?

10 A. I haven't looked to see what the relative amount,
11 but certainly the amount that would have been paid in the
12 first ten years. When you take present value into
13 account, that would have been -- that would have
14 accounted for the lion's share of the present value of
15 the claims that were going to be paid. Yes.

16 Q. And Mr. Swett acknowledged that Grace is keeping
17 equity in that case; right?

18 A. That was my point. Yes.

19 Q. And the creditor, the asbestos creditors in that
20 case, agreed to accept an amount that could be as low as
21 25 percent of what Dr. Peterson says Grace's liability
22 is.

23 A. That's my understanding. Yes, sir.

24 Q. Okay. And that's -- again, that's a case where
25 they could have gotten more.

Redirect - Magee

1 A. Well I don't know whether they could have gotten
2 more through negotiations. Certainly, Grace had more and
3 its shareholders kept more, but I'm not familiar with the
4 negotiations in the case.

5 Q. Are you aware that over 99 percent of the asbestos
6 creditors in that case voted in favor of that plan,
7 agreeing to accept as little as 25 percent of what
8 Dr. Peterson says is the amount they would have received
9 had they stayed in the tort system?

10 A. I know that they got more than the 75 percent.

11 Q. Let me ask you about -- early on in your
12 cross-examination, Mr. Swett was focused on the 15
13 designated plaintiffs' cases and suggesting that those
14 are the only cases where Garlock has any direct evidence
15 of misconduct and perhaps those cases are -- can't be
16 representative. Did Garlock ask for discovery of trust
17 claims and ballots and other evidence of exposure early
18 in the case?

19 A. Yes. I believe I testified that we had been
20 trying to get that, trying to get a lot of the discovery,
21 and trying to get a random sample in this case and that
22 we got what we could get.

23 Q. Okay. Do you recall the sample that we requested
24 was from plaintiff firms? I mean from, really, just
25 about all the plaintiffs' firms on that list that

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1 Mr. Swett highlighted?

2 A. Well I certainly know that we would have tried to
3 get as much of this discovery as we could.

4 Q. Let's just scroll through and look at the law
5 firms. We've got the Law Offices of Peter Angelos, the
6 law offices of Baron & Budd; Belluck and Fox, which I
7 believe we have been successful in getting discovery from
8 that firm. Brayton Purcell. And we can go on and on.
9 We don't have to highlight each one. But if you -- we'll
10 just scroll through the documents. You see we asked for
11 a modest number of claims from literally every
12 significant asbestos plaintiff's firm in the country.

13 A. We wanted to test what we had observed in some of
14 the cases to see how widespread the practices were. Yes.

15 Q. And what was the Committee's reaction when we
16 asked for that discovery?

17 A. Obviously, fought our ability to have that
18 discovery.

19 Q. Do you recall this request was made -- it says,
20 April 11, 2011, two and a quarter years before the
21 beginning of the estimation trial?

22 A. It's late in the day. I can't do that math. It's
23 over two years ago.

24 Q. Over two years beforehand. Okay. And today we
25 hear that Garlock allegedly doesn't have the evidence to

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1 prove that the type of misconduct that's displayed in the
2 15 cases is not a phenomenon that goes beyond this case?

3 A. I testified yesterday, Mr. Cassada, we were 15 for
4 15 in my view, and we would have liked to have had more
5 evidence.

6 Q. Focusing in on the general proposition of the
7 trust and the fact that they have site lists. Mr. Swett
8 asked you whether it wasn't true that you could have
9 looked at a trust and seen what sites at which they've
10 paid claims, what he calls the "presumed site list"
11 cases. Was that enough for Garlock to establish exposure
12 of a plaintiff in a specific case?

13 A. I think we've heard over and over testimony about
14 how just putting the claimant at a site where products
15 were was not sufficient to get that to the jury. We've
16 heard all these lawyers testify about how you had to put
17 the claimant -- put the product of those potential
18 defendants in the breathing zone of that claimant in
19 order to get them on the jury form and have them -- and,
20 more importantly, to have them attribute liability to
21 demonstrate the part of Garlock's case that was so
22 important to it, to demonstrate what product had caused
23 the disease.

24 Q. But having a trust claim that names a site.
25 That's a different proposition, isn't it?

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1 A. In my view it is. In my view -- in my view the
2 site list is simply a means to demonstrate the exposure
3 that is being complained about in the trust claim form.
4 In other words, if you're going to file a trust claim
5 form, you're saying I was exposed to the product for
6 which this company was responsible, and now I'm
7 establishing that exposure by telling you here's where I
8 worked at the site and here's what my job was but they're
9 still asserting they had exposure to the product there.

10 Q. We saw earlier it requires them to tell when they
11 were first exposed at that site --

12 A. That's right.

13 Q. -- by that product and when they were last exposed
14 at that site of their product?

15 A. That's right.

16 Q. Are trust claims filed under penalty of perjury?

17 A. Yes. I think we read that affidavit or
18 attestation or whatever it is that says exactly that.
19 Yes.

20 Q. Okay. Mr. Swett asked you about the Beltrami case
21 which -- do you recall that that's a Belluck and Fox
22 case?

23 A. I do remember that's a Belluck and Fox case.

24 Q. Did you recall that was settled with the Homa
25 group?

Redirect - Magee

1 A. Yeah. And I suspect Mr. Turlik talked at length
2 about that. The Homa case was the main driver case in
3 that deal. I do remember that it was resolved. And all
4 those other cases that we resolved with it were resolved,
5 I believe, on the 18th day of trial in the Homa case.

6 Q. Mr. Beltrami. Is that the case where the
7 plaintiff filed six trust claims before the settlement
8 and did not identify a single one in discovery responses?

9 A. We've got that information and I'd have to look.
10 It's late in the day. I can't remember specifically, as
11 I sit here, how many there were.

12 Q. I want to go back to the Treggett case. I know
13 you spent a lot of time on Treggett. Mr. Swett was
14 asking you about what the testimony was about, what the
15 exposures was on the submarine, I believe, where
16 Mr. Treggett was exposed. I noticed he didn't ask you
17 about the 16 trust claims that Mr. Treggett filed after
18 the case was over. Do you know whether any of the
19 products identified in those claims were identified
20 during the case?

21 A. My understanding from the extensive review is that
22 the specific products that we're talking about, that
23 almost all of them, if not all of them -- it may have
24 been two that were -- but almost all of them were not
25 identified at the trial or in the discovery.

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1 Q. We talked earlier in the case about the Babcock &
2 Wilcox and Owens Corning claims. In fact,
3 Mr. Inselbuch showed them to Mr. Brickman. Those were
4 claims filed based in part on Mr. Treggett's exposure at
5 Mare Island in the shipbuilding and repair industry. Do
6 you remember those claims?

7 A. I do remember that, and I remember that Mare
8 Island reference. Yes.

9 Q. Do you recall what Mr. Treggett said in his case
10 about his exposure to asbestos at Mare Island?

11 A. I believe I recall that he said he was not exposed
12 to asbestos while he worked at Mare Island.

13 Q. Do you recall what he said about exposure in the
14 shipyard -- in the shipbuilding and repair industry?

15 A. I believe he said he was not exposed there either.

16 Q. Okay. And the shipbuilding and repair industry,
17 that's a -- that's a heavy amphibole insulation exposure
18 site, isn't it, that type of site?

19 A. Most of those types of sites would have been,
20 depending, obviously, on the time period. But, yes,
21 during the time period that he would have been there,
22 that would have been a heavy -- a likely heavy exposure.
23 Yes.

24 Q. But then back to the submarine where you and
25 Mr. Swett were focused. I think Mr. Swett talked about

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1 some unspecified rule wherein a claimant can vote in a
2 bankruptcy case just based on some good faith beliefs
3 that they might find evidence some day to support that.
4 You looked at and, I believe, you quoted the actual
5 language certifying under penalty of perjury that there
6 was exposure. That's what was in the ballot; right?

7 A. That's what I tried to allude to. Yes.

8 Q. Okay. Do you know when Professor Brickman talked
9 and we examined the rule in Texas where some of these
10 cases, I believe Torres and Phillips appeared, where the
11 plaintiff has an obligation to disclose all the evidence
12 they have that may be relevant in a case and that may be
13 requested. In Texas, the lawyer has a duty to disclose
14 its knowledge of evidence as well. Do you know whether
15 that rule exists in the state of California?

16 A. Yeah.

17 MR. SWETT: Objection to the characterization to
18 rule.

19 THE COURT: Overruled. Answer it if you can.

20 THE WITNESS: Well, I believe that that rule
21 exists in lots of states. And we know -- we've seen the
22 Texas one. And I also understand from California counsel
23 that it also exists in California. Yes.

24 BY MR. CASSADA:

25 Q. Okay. So a plaintiff's lawyer in California can't

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1 sit there quietly and not expose -- not disclose evidence
2 on the theory that his client doesn't happen to know
3 about that evidence.

4 A. I believe the rule -- and you can ask California
5 lawyers about it, but I believe the lawyer rule is that
6 they are responsible for disclosing what they know in
7 responses that their client has to provide.

8 Q. Okay. And you -- I think you had a recollection
9 that Mr. Phillips had actually been asked by his lawyer
10 to quantify the extent of his exposures to gaskets versus
11 other things, including insulation.

12 A. Yeah. I kept referencing that. We didn't get to
13 see that particular --

14 Q. I'm sorry. I said Phillips. I meant Treggett.

15 A. I'm sorry. I thought you said Treggett. We
16 didn't get to see that particular part of Mr. Treggett's
17 testimony but, I believe, he said 70 percent of the time
18 gaskets and only three percent of the time insulation, or
19 something to that effect.

20 Q. While we're putting that transcript on the board.
21 Do you recall that Mr. Treggett called Mr. Templin as his
22 expert, his industrial hygiene expert, during the case?

23 A. I do recall that Mr. Templin was his -- was the
24 expert in that case for him --

25 Q. Okay.

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1 A. -- at least the one on in the direct -- in their
2 case in chief.

3 Q. I believe we heard earlier from Mr. Swett that
4 during the course of a case when defendants settle and
5 drop out, that the litigant's testimony hardens and they
6 start focusing on and their stories may change a bit.
7 Does this refresh your recollection with respect to what
8 Mr. Treggett said about his gasket versus insulation
9 exposure?

10 A. Right. The reference at the bottom: 70 percent
11 gasket work to 30 percent equipment repair.

12 Q. Right.

13 Question: "Yesterday, Mr. Treggett, we were
14 asking you some questions about your knowledge of
15 the gasket, Garlock asbestos-containing gaskets.
16 And what I wanted to ask you is how often during
17 the time period that you were aboard the John
18 Marshall did you work with the gaskets?"

19 Answer: "A great deal of time was spent on gasket
20 work."

21 Question: "Was that a primary or main function of
22 your job duties as a machinist mate?"

23 Answer: "Yeah. I would say that based on the
24 overall four and half years that I was on the
25 submarine, probably the largest portion of the

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1 work we did was gasket replacement work, in the
2 neighborhood of 70 percent gasket work to 30
3 percent equipment repair."

4 A. It's amazing that the ship ever sailed.

5 Q. And did he then quantify from the equipment repair
6 how much time he would have spent with insulation?

7 THE COURT: It was the kind of ship that sunk. It
8 didn't have to float.

9 THE WITNESS: That's right.

10 (Laughter.)

11 THE WITNESS: But a leak would have been a really
12 bad thing.

13 BY MR. CASSADA:

14 Q. And you see here?

15 A. Yes, sir. There's the three percent that I had
16 recalled down at the bottom of this, if that's what
17 you're trying to point to.

18 Q. Yeah.

19 A. It said amount of time spent removing insulation
20 from the exterior of the equipment fell into that 30
21 percent less than 10 percent of that time. So, you know,
22 10 percent of 30 percent would have been three percent.
23 A very small amount of time was his answer.

24 Q. Okay. And then did Mr. Treggett's lawyer then ask
25 the industrial hygienist, Mr. Templin -- he may be a

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1 doctor and I apologize if I got that wrong -- to what
2 extent Mr. Treggett's disease was -- could be contributed
3 to the amosite insulation? Do you recall that?

4 A. I do. I recall that that happened.

5 Q. Do you recall what the opinion was that he
6 elicited?

7 A. I'd have to see that.

8 Q. And you see the question actually talks some about
9 removing the pads and the insulation and whatnot? And he
10 gets to the question there at the end of the page.

11 Question: "All right. Now based on what we know
12 about what Mr. Treggett did and what is your
13 opinion about the role that any amosite exposure
14 would have played in terms of the relative dose of
15 asbestos that he received during his work on the
16 Marshall?"

17 He said, "Certainly it would have played a role,
18 as it would have contributed to his overall total
19 asbestos exposure. But it would have been a much
20 smaller contribution, clearly, than the chrysotile
21 contribution."

22 Question: "And based on what you understand Bob
23 Treggett did, did you see any significant
24 occasions where he would have had hands-on work
25 himself with pipe insulation, block insulation and

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1 insulation muds? Or was that something he would
2 have been around?"

3 Answer: "To the best of my recollection, for the
4 most part those were activities that Mr. Treggett
5 was around as opposed to the activities that he
6 personally engaged in."

7 And he says -- so, just to sort of sum up. If
8 there was a representation that amosite asbestos that did
9 it or that substantially increased his risk for
10 mesothelioma -- we're having some technical difficulty
11 there.

12 MR. SWETT: You have my sympathies.

13 THE WITNESS: I think the system is as tired as I
14 am.

15 THE CLERK: I was trying to turn the volume up.
16 There we go.

17 BY MR. CASSADA:

18 Q. I asked, "Just to sum it up. If there was a
19 representation that the amosite asbestos that did it or
20 that substantially increased his risk for mesothelioma.
21 When you look at the universe exposures that he had,
22 would you agree or disagree with that?" And the answer:
23 "I would not agree with that characterization."

24 A. Right. This is the kind of testimony that I was
25 referring to when I talked about how the testimony had

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1 changed.

2 Q. When we -- there was a time during your
3 cross-examination when you were asked a question that
4 actually got cut off because I believe you were concerned
5 that it might involve the disclosure of information that
6 would have been designated confidential. I believe you
7 were talking about Garlock's experience in Illinois with
8 the Simmons Cooper firm.

9 A. Yes.

10 Q. Does Simmons Cooper hold a lot of -- represent a
11 lot of claimants who assert claims against Garlock?

12 A. Not only that, but it has by far the most number
13 of current claimants in this bankruptcy case against
14 Garlock, the current mesothelioma claimants against
15 bankruptcy in this case. Yes.

16 Q. Would you describe your experience or Garlock's
17 experience in resolving claims with the Simmons Cooper
18 firm?

19 A. I will say, and I may have used it as an example
20 earlier in my testimony some days ago when I referred to
21 that as an example of a settlement deal that was for cost
22 avoidance purposes. The overall average, when you
23 include the zero pays in that -- for all time of the
24 Simmons Cooper firm is about \$10,000 per meso. For the
25 paid mesothelioma claims, it's somewhere in the \$25,000

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1 range for resolutions with the Simmons law firm.

2 Q. Okay. Do you know whether you pay a larger
3 percentage of Simmons Cooper claims than you pay of other
4 firms' claims?

5 A. I'd have to look at the data. I know there are
6 some zeros in that -- where there's no Garlock exposure,
7 just like everywhere else. But I do know that a
8 significant number of claims are paid at those average
9 rates to the Simmons firm. Yes.

10 Q. Do you know whether Simmons Cooper has engaged, at
11 least against Garlock, in the type of targeting practices
12 that you've described?

13 A. Well, I don't know that we sought or received any
14 evidence about that, but I don't believe their numbers
15 have changed materially over time. So I don't have any
16 reason to suspect that kind of activity.

17 Q. Do you know there was -- there were questions that
18 you were asked earlier about what Garlock might have
19 expected had it remained in the litigation in California
20 where we had the O'Neil decision that absolved or
21 protected equipment makers from other asbestos products
22 used in connection with that. Do you have some
23 understanding of how -- what impact that decision has had
24 on asbestos litigation in California?

25 A. My understanding from the numbers and from talking

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1 to the California lawyers and the Illinois lawyers is
2 that the numbers in California have declined and the
3 numbers in Illinois, and particularly Madison County have
4 increased.

5 Q. Do you know whether Simmons Cooper's percentage of
6 mesothelioma claims has increased over time?

7 A. I believe in a deposition that's in evidence in
8 this case that the Simmons representative has said that
9 they believe their share of the mesothelioma claims has
10 increased since the time of the O'Neil decision.

11 Q. You were asked a considerable number of questions
12 about the Fowers case. Do you recall that?

13 A. I do.

14 Q. Now, the Fowers case was brought by the Baron &
15 Budd firm?

16 A. Yes.

17 Q. Were we able to get discovery regarding the Fowers
18 case and what trust claims Mr. Fowers may have filed and
19 what positions or representations he may have made in
20 those kind of claim?

21 A. We were not. We were not even able to get
22 personal injury questionnaires from the Baron & Budd
23 firm. Basically, the Baron & Budd firm thumbed their
24 nose at this whole process.

25 MR. CASSADA: Your Honor, if I might have a moment

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1 to confer.

2 THE COURT: All right.

3 MR. CASSADA: That's all I have. Thank you, Your
4 Honor.

5 THE COURT: Okay.

6 MR. SWETT: No further questions.

7 THE COURT: You can step down, Mr. Magee.
8 Let's take a break and come back at 4:30.

9 (Off the record at 4:20 p.m.)

10 (On the record at 4:31 p.m.)

11 MR. CASSADA: Your Honor, we would normally plan
12 at this time to offer a bunch of exhibits. We will do
13 that first thing in the morning and allow Mr. Phillips to
14 proceed with his witness.

15 THE COURT: All right. Good.

16 MR. SWETT: We would also offer documents, but we
17 would like to review the transcript to keep our order
18 straight.

19 THE COURT: All right. Good.

20 (Back in open court.)

21 MR. PHILLIPS: Good afternoon, Your Honor. Todd
22 Phillips on behalf of the official Committee of Asbestos
23 Personal Injury Claimants. The Committee calls Paul J.
24 Hanly, Jr.

25 THE COURT: All right.

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(Witness duly sworn at 4:32 p.m.)

DIRECT EXAMINATION

MR. PHILLIPS:

Q. Mr. Hanly, will you tell us your full name for the record please?

A. My name is Paul J. Hanly, Jr.

Q. Now we've asked you to come to court today to state your expert opinion on certain aspects of asbestos litigation; is that correct?

A. That's correct.

Q. What is your occupation?

A. I'm an attorney.

Q. Where do you work?

A. I work in New York. I'm the co-founding partner of a litigation firm.

Q. Can you please describe for the Court your educational background?

A. Yes. I have a bachelor of arts from Cornell University, a master of arts from Cambridge University, and I have my J.D. from Georgetown University Law Center.

Q. Please describe your professional experience.

A. Following graduation from Georgetown, I had a job in a courthouse that looked like this and was of the same vintage. I clerked for a United States District Judge for the District of New Jersey from 1979 to 1980. During

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1 that time, Judge Whipple, for whom I clerked, actually
2 had some of the first Manville personal injury cases on
3 his docket. So part of my responsibilities actually was
4 helping the judge in connection with those asbestos
5 cases.

6 I then left the clerkship after a little over a
7 year. I went to work for a law firm in New York, a large
8 corporate defense firm, for about a year. That firm had
9 nothing to do with asbestos. In 1981 I joined another
10 firm, a litigation firm. And two weeks after I joined, a
11 lateral partner joined the firm bringing with him
12 approximately 50 asbestos cases on behalf of a defendant
13 called Turner and Newall.

14 I continued in asbestos litigation representing
15 Turner and Newall and its subsidiaries for the better
16 part of 20 years across four different law firms, the
17 client coming with me as I made various changes in terms
18 of where I worked.

19 Q. How long have you been practicing?

20 A. Well I was admitted to the Bar of the state of New
21 York in 1980. I was admitted to the Bar of the state of
22 Texas in 2001. So I've been a practicing litigator and
23 trial lawyer for 33 years.

24 Q. Have you handled asbestos cases in other states?

25 A. In, I believe, all 50 states, and Puerto Rico and

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1 in Guam.

2 Q. Now you mentioned subsidiaries. Who are the
3 subsidiaries of the Turner and Newall companies?

4 A. Yes. Turner and Newall was an English company.

5 It was actually the largest asbestos manufacturing
6 company in the world, larger even than Johns-Manville.

7 Turner and Newall had five or six subsidiaries that were
8 sued in the United States asbestos litigation in
9 connection with the manufacture and sale and distribution
10 in the United States of asbestos-containing products.

11 Turner and Newall also owned a gasket
12 manufacturing company that the Court has heard about
13 several times in the last few days. That company was
14 called Flexitallic Gasket Company and it -- its gaskets
15 were present, I understand, at all of the same kinds of
16 job sites as Garlock's.

17 Q. What kind of gaskets did Flexitallic manufacture
18 or sell?

19 A. They made only one type of gasket. It was called
20 a spiral wound gasket. It consisted of concentric
21 circles of stainless steel in between which were
22 resonated or bound asbestos-containing material bound in
23 a latex matrix. They were used in similar applications
24 to Garlock gaskets but, unlike Garlock gaskets, these
25 gaskets could not be cut because of the concentric layers

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1 of steel. And as a consequence, if it's fair to say that
2 Garlock's gaskets were encapsulated, my client's gaskets
3 were super-encapsulated.

4 Q. What were your duties as the national asbestos
5 trial coordinating and settlement counsel for Turner and
6 Newall companies?

7 A. Well they varied somewhat over the 20-year period.
8 But because Turner and Newall was an English company and
9 it had no American lawyers who worked in the company
10 itself in-house, it had English solicitors who were the
11 general counsel and associate general counsel, it fell to
12 myself and members of our team to essentially -- one of
13 our roles was essentially to play the role of kind of a
14 general counsel.

15 Much like Mr. Magee's testimony or
16 Mr. Magee's experience, we were responsible for
17 formulating settlement strategies, trial strategies,
18 discovery strategies. We were also given responsibility
19 for formulating budgets, overseeing -- hiring -- actually
20 hiring and overseeing all defense counsel around the
21 country, as many as a hundred different firms.

22 We did, sort of, all of the things that a general
23 counsel would do, owing to the fact that the English
24 solicitors, as talented and as experienced as they were,
25 really had no familiarity with the U.S. asbestos products

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1 liability litigation. They had no familiarity with jury
2 trials in civil cases, with the kind of discovery that's
3 permitted in the United States, and the like.

4 The other part of our duties over that 20-year
5 period were negotiating, either directly or indirectly,
6 settlements with plaintiffs' firms around the country and
7 participating in numerous asbestos personal injury and
8 property damage asbestos property damage trials.

9 Q. Can you describe for the Court how you resolved
10 cases for the Turner and Newall company?

11 A. Well, the philosophy that we embarked upon in the
12 early 1980s was an attempt to resolve in group
13 settlements, where possible, as many cases as possible at
14 the lowest dollar per case average. And we did that
15 directly for a number of years and then indirectly
16 through our -- our membership in two joint defense
17 organizations that, I believe, the Court has heard about,
18 the Center for Claims Resolution, more recently CCR, and
19 earlier something called the Asbestos Claims Facility.

20 Q. How many asbestos personal injury cases were
21 resolved while you were national trial and coordinating
22 and settlement counsel for Turner and Newall and
23 subsidiaries?

24 A. I believe, historically, prior to the petition
25 date, Turner and Newall and Federal-Mogul which, I guess

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1 we'll get to later, and also filed for bankruptcy
2 protection. But prior to the petition date, I believe
3 that we resolved in excess of 300,000 asbestos personal
4 injury cases. And it could have been -- it could have
5 been higher than that, I'm just not entirely sure. But,
6 certainly, the magnitude was up there in the hundreds of
7 thousands.

8 Q. Who did you report to when you defended those
9 companies in asbestos litigation?

10 A. Well, between 1981 and 1998, that 17-year period,
11 I reported directly to the general counsel of Turner and
12 Newall and I reported directly to the chairman of the
13 board of Turner and Newall.

14 Q. Now you mentioned Federal-Mogul. Did at some
15 point you represent Federal-Mogul in litigation?

16 A. Yes. What occurred was in 1998, Federal-Mogul
17 Corporation, which is a Detroit or Michigan-based
18 corporation, a publicly traded corporation, it acquired
19 Turner and Newall and all of its subsidiaries, acquiring
20 with the acquisition of that company all of the asbestos
21 liabilities. And myself and my partners and my
22 colleagues were asked to continue the representation of
23 Turner and Newall after the acquisition, Turner and
24 Newall, Flexitallic, the other subsidiaries.

25 In addition, Federal-Mogul itself had other

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1 subsidiaries with asbestos liabilities, and we were asked
2 to take on the representation of those companies as well.
3 So between 1998 and 2001, which was the date of the
4 petition in bankruptcy, we represented Turner and Newall,
5 Flexitallic, all of the other Turner subsidiaries, as
6 well as those Federal-Mogul subsidiaries who had their
7 own streams of asbestos liability.

8 Q. Mr. Hanly, in your career, have you worked for
9 both plaintiffs and defendants?

10 A. Oh, yes. Throughout my tenure as an asbestos
11 defense lawyer, as national trial and coordinating
12 counsel; I was also, to the extent that I had time, also
13 doing non-asbestos plaintiff's cases, a variety of
14 catastrophic injury cases, plaintiff's copyright cases,
15 other kinds of plaintiff's contingency fee cases. And
16 then after the filing for the petition in bankruptcy in
17 2001, my partners and colleagues and I decided to go in a
18 different direction. And we have in the last 12 years or
19 so -- ten years become very active as plaintiff's mass
20 tort lawyers in non-asbestos areas such as pharmaceutical
21 litigation, medical device litigation.

22 MR. PHILLIPS: Your Honor, at this time I offer
23 Mr. Hanly as an expert in mass tort defense with a
24 specific focus on asbestos tort defense strategies in the
25 1980s, 1990s and early 2000s.

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1 MR. KRISKO: Voir dire, Your Honor.

2 THE COURT: All right.

3 **VOIR DIRE EXAMINATION**

4 BY MR. KRISKO:

5 Q. Good afternoon, Mr. Hanly.

6 A. Good afternoon.

7 Q. How would you describe your area of expertise?

8 A. Presently or historically?

9 A. The nature of your expertise that you intend to
10 offer the Court today.

11 A. Well, as national trial coordinating and
12 settlement counsel and as holding the de facto role of
13 kind of U.S. general counsel over a 20-year period, I
14 would describe my expertise as knowing a lot about and
15 holding a number of opinions concerning asbestos personal
16 injury and, for that matter, asbestos property damage
17 trial strategies, settlement strategies, settlement
18 histories, pretty much everything to do with asbestos
19 litigation.

20 Q. And the nature of your self-described expertise is
21 solely based on your actual experience representing
22 Turner and Newall and the Federal-Mogul companies prior
23 to 2001?

24 A. In addition to that, my federal court clerkship
25 and, as well as -- I believe we discussed this in the

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1 deposition which you took of me. I was involved for a
2 year or so after the filing of the petition defending
3 another asbestos company which did not file for
4 bankruptcy. So those would be the bases for my opinions
5 and the bases of my purported expertise.

6 Q. Okay. But you have not been involved in asbestos
7 litigation since approximately 2002?

8 A. If by "involved" you mean handling asbestos
9 personal injury cases on a day-to-day basis, I would
10 answer that since the end of 2002 or early 2003, that is
11 correct. If by "involved," however, you mean to include,
12 for example, whether or not I have kept abreast of weekly
13 developments in asbestos litigation, the answer to that
14 is that I continue to be involved.

15 Q. Okay. But you currently don't represent any
16 clients to that asbestos litigation; is that correct?

17 A. That is correct.

18 Q. You haven't appeared in an asbestos case since
19 approximately 2002?

20 A. That's correct.

21 Q. You haven't tried a case since two thousand --
22 since before 2002; is that correct?

23 A. An asbestos case?

24 Q. An asbestos case.

25 A. That's correct.

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1 Q. Okay. You have not settled an asbestos case since
2 prior to 2002; is that correct?

3 A. That's correct.

4 Q. You have not, since prior to 2002, made any
5 assessment of the strengths or weaknesses of defenses
6 offered by asbestos defendants; correct?

7 A. That's not correct.

8 Q. Okay. What is your experience assessing strengths
9 or weaknesses of asbestos defendants since 2002?

10 A. My work in this case.

11 Q. Okay. Aside from your work in this case, you have
12 not done any of that, is that correct, since 2002?

13 A. No, that's not entirely correct. And the reason
14 it's not correct is because, in connection with the
15 Turner and Newall Federal-Mogul bankruptcy, I did quite a
16 bit of work that would have covered assessing defenses in
17 asbestos personal injury litigation that resulted in my
18 testimony in that bankruptcy proceeding in or around
19 2006. But apart from that, you're correct.

20 Q. Okay. Now, you mentioned that we -- that I took
21 your deposition earlier in this case. And I believe you
22 told me that during your experience as counsel to the
23 Turner and Newall companies that Turner and Newall tried
24 ten or fewer cases to verdict; is that right?

25 A. I believe that's what I told you, and that is my

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1 best recollection.

2 Q. Okay. And I think you also told me that you were
3 at trial in only two or three of those cases; is that
4 correct?

5 A. No. Well, yes, I was at trial in only two or
6 three cases that went to verdict. However, I tried in
7 the sense of starting up trials that ultimately did not
8 go to jury verdict, I think, between 25 and 40 trials
9 over that 20-year period.

10 Q. Okay. And we'll talk -- we may talk about this a
11 little later, but those included cases where you were
12 co-counsel with CCR or Asbestos Claims Facility counsel;
13 is that correct?

14 A. That's correct.

15 Q. Okay. Going back to what you described your
16 experience as before at your deposition. You also said
17 that you did not handle the trials for the subsidiary of
18 Flexitallic; is that correct?

19 A. That is generally correct. There may have been
20 one or two cases in which -- that's not entirely true.
21 There's at least one case in which I was counsel for both
22 entities, the Turner and Newall parent and Flexitallic.
23 But other than that, you're correct.

24 Q. So just the one -- the one case that you can
25 remember?

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1 A. That's correct.

2 Q. Okay.

3 A. Actually, in the courtroom is -- I'm assuming
4 you're asking me was I actually in the courtroom. If the
5 question is whether I had involvement in the many trials
6 against Flexitallic, the answer to that would be yes
7 because I was involved in terms of overseeing the trial
8 counsel, being in touch with trial counsel and
9 formulating the strategy for trial counsel.

10 Q. The reason why I ask, Mr. Hanly, is your report
11 describes trial experience that suggests you were in the
12 courtroom. I just want to have an understanding for this
13 Court of what your actual experience was in the courtroom
14 for either Turner and Newall or Flexitallic. So that's
15 -- my question was focused on that.

16 A. And so to be precise for the judge. My experience
17 in courtrooms is starting up between 25 and approximately
18 40 asbestos cases that went of varying lengths and, in
19 addition, being in literally hundreds of courtrooms over
20 a 20-year period in connection with various evidentiary
21 hearings, Motions in Limine, Motions for Summary
22 Judgment, et cetera, et cetera.

23 Q. Are you aware -- let me ask you this: Have you
24 published any articles on asbestos litigation that would
25 inform your opinions that you're going to offer here

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1 today?

2 A. No.

3 Q. Would you describe yourself as an academic in this
4 area?

5 A. No.

6 Q. Are you aware of the doctrine that says that it is
7 inappropriate for a witness to instruct the Court on what
8 the law is?

9 A. Well, I would say based on my experience, that
10 would depend on what court you were in.

11 Q. Well, aside from your own personal experiences as
12 T&N counsel, have you done any special study or review of
13 peer-reviewed literature of any kind to provide a basis
14 for the opinions you intend to offer here today?

15 A. No.

16 Q. Do you intend to waive any attorney-client
17 confidence or privileges related to your current practice
18 of law in order to provide the opinions you're here to
19 offer today?

20 A. No.

21 Q. Mr. Hanly, you are not an expert in jury behavior
22 in terms of the study of jury behavior and the
23 consideration or publishing of peer-reviewed literature
24 on the subject of jury behavior?

25 A. I have not published on jury behavior. I have

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1 lectured on trying cases before juries. And jury
2 behavior is something that I have more than a passing
3 interest in as continuing to be an active trial lawyer in
4 complex litigation.

5 Q. That experience is providing your perception of
6 juries based on your own personal experience?

7 A. I'm sorry. Could you repeat the question?

8 Q. That experience is based on your own perception of
9 juries, based on either your time at Turner and Newall or
10 your time since and not only on any sort of scientific
11 study or examination of peer-reviewed literature on jury
12 behavior?

13 A. Well, no. I've read a lot of papers on jury
14 behavior. And it's something that I have an interest in
15 because my firm and I are active trial lawyers.

16 Q. Your opinion in your report that you've disclosed
17 in connection with your testimony does not cite or rely
18 on any peer-reviewed articles on jury behavior; is that
19 correct?

20 A. That's correct.

21 Q. And you don't intend to offer opinions here before
22 this Court based on any peer-reviewed publications on
23 that subject; is that correct?

24 A. That's correct. To the extent that my opinions
25 concern what juries do in asbestos cases, that would be

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1 based upon 20 years of either being in courtrooms or
2 hearing firsthand from those who were in courtrooms how
3 juries behave in asbestos personal injury cases.

4 Q. Mr. Hanly, you do not have experience practicing
5 bankruptcy law; is that correct?

6 A. That's correct.

7 Q. And you're not here to offer an opinion about
8 bankruptcy law; is that correct?

9 A. I would not come to a bankruptcy court and offer
10 opinion on bankruptcy law to a bankruptcy judge. That's
11 correct.

12 Q. Okay. You're not going to offer an opinion on
13 what kind of evidence the Court should consider in
14 connection with making decisions about -- in connection
15 with estimating the allotted amount of mesothelioma
16 claims, are you?

17 A. Could you repeat that question?

18 Q. You're not going to offer an opinion to the Court
19 on what kinds of evidence the Court should consider in
20 estimating the allotted amount of mesothelioma claims,
21 are you?

22 A. Well I'm certainly not going to attempt to say to
23 Judge Hodges, Your Honor, you should consider this
24 evidence or that evidence. But I do expect I will be
25 testifying concerning evidence, evidence that has been

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1 and is routinely admitted in asbestos personal injury
2 cases. I don't mean to quibble with you, Mr. Krisko. I
3 just find your question a little difficult to answer.

4 Q. Okay. I think you've answered it sufficient
5 enough.

6 MR. KRISKO: Your Honor, we would object to
7 Mr. Hanly as an expert to the extent that his opinions:
8 A, provide commentary on the state of the asbestos
9 litigation system since he withdrew from an active
10 practice in, it appears to be 2002, and also to the
11 extent that he intends to offer opinions on jury behavior
12 that are not simply based on his own perceptions.

13 THE COURT: Well, I'll overrule the objection and
14 we'll let him testify. I think the things you mentioned
15 can go to the weight of what he says.

16 **CONTINUING DIRECT EXAMINATION**

17 BY MR. PHILLIPS:

18 Q. Mr. Hanly, I just wanted to clarify something.
19 How many asbestos cases did you resolve in your time at
20 Turner and Newall and Federal-Mogul? How many cases did
21 you and your team resolve --

22 A. Hundreds of thousands.

23 Q. You have a number of opinions on asbestos
24 litigation; correct?

25 A. Yes. I set those forth in my report and I was

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1 examined concerning them in my deposition.

2 Q. Can you describe for the Court what your opinions
3 are?

4 A. Well, generally, I have, I guess, several
5 opinions. One is that in the tort system in the 1980s
6 and '90s ,there were many defendants, so-called
7 "peripheral defendants" who had the opportunity, because
8 there were so many large insulation-type defendants, to
9 essentially free ride on the defense and settlements of
10 those lead defendants, my own clients included.

11 Another opinion is that when these larger
12 companies, and I'm thinking of Johns-Manville and
13 companies like Eagle-Picher and later on Owens Corning.
14 When these big insulation manufacturers went into
15 bankruptcy, the defendants who prior to that time were
16 regarded or regarded themselves as peripheral defendants
17 were brought to the fore by the plaintiff's bar and,
18 therefore, they became more or less lead defendants and
19 were no longer peripheral defendants.

20 Another opinion that I expect to offer with the
21 Court's permission is my view concerning juries in
22 asbestos personal injury cases. And that's -- that's
23 that juries in these cases are focused upon the human
24 beings, the parties in the courtroom, and that the
25 long-term use of what's called the "empty chair defense"

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1 by a defendant, which is essentially trying to blame the
2 plaintiff's disease on conduct of someone, some party,
3 who's not in the courtroom, either through a corporate
4 representative -- is not in the courtroom, either through
5 a corporate representative or through an individual
6 defense lawyer, is a practice that in the long-term just
7 doesn't work in my experience.

8 Another of my opinions, with the Court's
9 permission, would be that in the '80s and '90s, the
10 plaintiff's bar was not focusing their efforts, their
11 resources, on gasket manufacturers like my client,
12 Flexitallic, and like Garlock and John Crane and other
13 gasket manufacturers. The plaintiffs were focusing in
14 those days up until, really, the mid- to late 1990s,
15 again, on these big defendants, the big insulation
16 companies, who had a treasure-trove of bad liability
17 documents and who were really kind of low-hanging fruit
18 for the plaintiffs because the plaintiffs had worked up
19 the cases against those companies.

20 And I guess the last of my opinions, with the
21 Court's permission, is that the trial of cases, or a
22 strategy which would bring -- put at the forefront the
23 notion that you could try more than a handful of cases or
24 all the cases is never a viable claims management
25 strategy for any defendant. And it just -- it just is

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1 never going to work, and history has proved that to be
2 the case over and over.

3 Q. Before we delve deeper into your opinions, let's
4 talk some more about your involvement in the asbestos
5 litigation. What kind of asbestos products did Turner
6 and Newall and Federal-Mogul companies manufacture?

7 A. Yes. Well, as I said, Turner and Newall was the
8 largest asbestos company in the world. It proudly
9 boasted a few years before it got sued that it was an
10 asbestos giant. It owned asbestos mines in southern
11 Africa and Canada. It owned asbestos mills. It owned
12 asbestos manufacturing plants which manufactured every
13 conceivable kind of asbestos-containing product.
14 Amosite, crocidolite and chrysotile are the three fiber
15 types that I know the Court has heard a lot about. It
16 had a gasket manufacturer, Flexitallic gasket. It had a
17 brake materials manufacturer. It made all kinds of
18 brakes for automobiles and railroads and such. It had
19 insulation installation companies. In other words,
20 companies that installed insulation. It really made
21 everything -- everything conceivable.

22 Q. Thank you. You mentioned the Asbestos Claims
23 Facility and the Center for Claims Resolution. Can you
24 describe for the Court briefly what those organizations
25 were?

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1 A. Yes. The asbestos litigation really started in
2 the mid-'70s, at least that's what I understand. Of
3 course that was a few years before I was involved. But
4 around about 1985 -- actually, to be precise, June 19th
5 1985, a group of some 35 defendants, asbestos defendants
6 and their insurers, got together in a kind of joint
7 defense effort and they formed the facility called the
8 Asbestos Claims Facility.

9 The idea was that, let's say there were 25
10 defendants before that were involved in asbestos cases.
11 The 25 defendants would have had their own counsel in
12 every jurisdiction. So there would have been hundreds of
13 different law firms, and each defendant was paying lots
14 of money for that. Each defendant was negotiating their
15 own settlements. Each defendant was carrying their own
16 baggage, if you will, in trying cases. So the idea of
17 the Asbestos Claims Facility was to pool all the
18 resources, and it was to -- it was twofold.

19 It was, one, to try to create a claims processing
20 facility which would resolve large groups of cases, and
21 also to try to reduce the costs attendant upon asbestos
22 litigation by having in each jurisdiction maybe only one
23 or two law firms representing all the members of this
24 joint defense organization. So that was the philosophy.
25 Unfortunately, the organization only lasted for about

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1 three years and was out of business by September of 1988.

2 Q. What was the extent of your role working with the
3 ACF and CCR?

4 A. Well, you mentioned the CCR. So the CCR sort of
5 rose out of the ashes of the Asbestos Claims Facility and
6 it went into business in about October 1988. It was a
7 smaller organization, but it had the same concept. And
8 the CRR lasted another 12 years or so. So with respect
9 to those two organizations, the way this worked was every
10 defendant who was a member of these organizations, each
11 defendant paid a share of every case that the defendant
12 was named in, whether or not there was ever any evidence
13 put up about that particular defendant.

14 As a consequence, my client was keenly interested
15 in each and every case, in the strategy of each and every
16 case. Because if the case went to trial and my client
17 wasn't in but one of the other members was in and there
18 was a jury verdict, we paid a share. So my involvement
19 and the involvement of my team throughout that period,
20 from 1985 through the end of the ACF in 1988, and then in
21 the CCR from '88 to 2000, was to oversee, to assist in
22 the hiring of counsel, to train counsel and, actually, to
23 go out into the field physically and participate in every
24 sort of hearing that occurred in asbestos cases and, if
25 and when asbestos cases were tried, to participate in

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1 some fashion in the trials in order to protect the
2 interests of my clients.

3 Q. What were the circumstances when Turner and Newall
4 left or departed the CCR?

5 A. Well, this was around 2000 or early 2001. As the
6 Court has heard, beginning in the late 1990s and into the
7 early 2000s, a number of companies went into bankruptcy.
8 Actually, the bankruptcy started, of course, with
9 Johns-Manville many years before, but there were
10 bankruptcies of other large companies in the early '90s
11 -- in the late '80s, the early '90s and then through 1999
12 and 2000. By 2000, a number of defendants from CCR were
13 no longer members. They had left the organization. And
14 as each member lost -- left the organization, the share
15 of the remaining members went up.

16 So my clients were paying more and more money as
17 other companies were either leaving the organization for
18 bankruptcy protection or leaving for other reasons. And
19 so it seemed to us that it might make more sense to
20 become a standalone defendant again, and so that's what
21 we did.

22 Q. Now you mentioned the bankruptcy of
23 Johns-Manville. Has bankruptcy been part of asbestos
24 litigation for a long time?

25 A. Oh, yes. Manville went into bankruptcy 31 years

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1 ago this month. I was, at the time, in my first year and
2 a half as an asbestos litigator. And that -- the
3 bankruptcies continued. You have up here -- and these
4 are just a few of them. I can fill in that between 1982
5 and 1990 a company called Raybestos Manhattan, or
6 Raymark, went into bankruptcy. And then as you have
7 here, you have some large companies such as Celotex,
8 Eagle-Picher, Keene, and Owens Corning going into
9 bankruptcy in the decade between around 1990 and 2000.
10 So bankruptcies were a way of life beginning, as I said,
11 31 years ago with the bankruptcy of the largest American
12 asbestos company Johns-Manville.

13 Q. How did co-defendants react when Manville filed
14 for bankruptcy?

15 A. Well, it was quite a surprise. Manville chose to
16 file in the dog days of August of 1982. I recall
17 receiving a telephone call from the assistant general
18 counsel of Turner and Newall who had heard the news. And
19 everyone was -- everyone, meaning all the defendants in
20 the tort system, were very upset. They were upset
21 because Manville had as much as a 50 percent share, if
22 not higher, of every personal injury case. Manville was
23 trying all these cases. Manville was working up all of
24 the experts. Manville was the repository of all the
25 experts, of all the relevant documents, and the

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1 co-defendants naturally were -- I guess you could say
2 they were apoplectic because they perceived that they
3 would have to pick up the departed share of Manville.
4 This resulted, actually, because I was there.

5 There was a series of meetings of the
6 co-defendants after the Manville bankruptcy, which I
7 attended several of those meetings at which it was
8 discussed, what do we do now? And ultimately, in October
9 of '82, just a few months after Manville filed, a motion
10 was made. My clients did not join in the motion on our
11 advice. But the co-defendants, including Garlock, made a
12 motion to bankruptcy Judge Lifland, essentially asking
13 Judge Liffen to stop the whole United States asbestos
14 litigation; to extend the stay that was protecting
15 Manville to every defendant in the country and bring to a
16 screeching halt all, then, 11,000 cases which in those
17 days seemed like an awful lot of cases. Today it's a
18 drop in the bucket. But they actually asked Judge
19 Liffen to basically put an end to the litigation.
20 That's how seriously concerned the co-defendants were,
21 and for good reason. Judge Liffen ultimately did not
22 grant that relief.

23 Q. Will you bring up ACC-343, please? Is that the
24 motion you were referring to, Mr. Hanly?

25 A. Yes. Yes, it is. And you see there the lead

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1 counsel, the Anderson Russell firm? That's the firm
2 where I mentioned there were many, many meetings after
3 the Manville bankruptcy that I attended, at which
4 representatives of all the other major asbestos
5 defendants attended. Not that Garlock was a major
6 defendant at that time. Actually, it was not. But as
7 you see here, Garlock was one of the parties who filed
8 this motion.

9 Q. How did bankruptcies play a part after Manville?

10 A. Well, after Manville, everybody else had to pick
11 up the Manville share. So whatever you were paying in
12 July of 1982, in September of 1982, you were in line to
13 pay more, and that's what happened. That's what happened
14 to my client, and I understand that that's what happened
15 to -- I know that that's what happened to every other
16 major asbestos defendant over the years that followed.

17 And that cycle repeated itself as and when other
18 big, mainly, insulation companies such as Celotex,
19 Eagle-Picher, Keene and Owens Corning went into
20 bankruptcy, which is to say that the shares that those
21 folks had of any given personal injury case ultimately
22 came to be spread among those parties who were remaining
23 in the tort system. This was a very distressing
24 situation certainly for my client and, I know, for all
25 the other co-defendants.

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1 Q. Did you ever talk to any plaintiffs' attorneys
2 about this?

3 A. Oh, yes, I did. In the spring of 1984, so about
4 18 months or so after the Manville bankruptcy, we, Turner
5 and Newall through me, I happened to be responsible for
6 this group of cases. We had been settling railroad
7 worker cases from a place called Altoona, Pennsylvania
8 which had a big railroad yard and lots of asbestos
9 exposure. We had been settling those cases with a law
10 firm from South Carolina for \$50 a case. And there were
11 thousands of these cases.

12 In the spring of '84, I was visited by a then very
13 young lawyer, I think he was maybe a first-year lawyer,
14 and his name is Joe Rice. I believe he's going to be a
15 witness in this proceeding. Mr. Rice had just started at
16 the law firm that he was with at the time. And he came
17 to New York and we sat down and I said well, you know, we
18 want to resolve the next batch of Altoona railroad cases,
19 so we're prepared to pay \$50 a case. And Mr. Rice said
20 well, no, you're not going to pay \$50 a case. You've got
21 to pay \$100 a case. And I said, Joe, why? I mean,
22 nothing has changed. And he said, oh, no, everything has
23 changed. Manville is no longer paying and you're going
24 to have to pick up a part of the Manville share, and
25 that's what happened.

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1 And that -- that event repeated itself in terms of
2 similar dealings with all the counsel whose names I've
3 seen up on the screen here in the last few days when I've
4 been attending this trial. Which is to say, when the
5 next big company would go into bankruptcy we would have
6 conversations about, can we continue the same case
7 average? And invariably, the answer was no because my
8 client's suffering is no less today than it would have
9 been when Manville was in the case or someone else was in
10 the case. So somebody's got to pay for that and it's
11 going to be you.

12 Q. What did defendants, such as Owens Corning, do in
13 response to the bankruptcies?

14 A. Well, Owens Corning over the years had different
15 approaches to the litigation. Owens Corning was a member
16 of the Asbestos Claims Facility between '85 and '88, and
17 at that time it was going along with the notion of trying
18 to resolve groups of cases. Later on, in the '90s, it --
19 as it became, really, the target, really the principal
20 target of the plaintiff's bar in the '90s, it adopted a
21 very aggressive trial strategy of trying to try most or
22 many cases -- certainly, many cases.

23 And one of the things that it did in connection
24 with these cases, and there was some testimony about it,
25 I believe, which just from Mr. Magee -- at least

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1 Mr. Magee was asked about it. Owens Corning, OCF, put
2 together what was called the picture book. It was a big
3 series of notebooks which actually had photographs of
4 co-defendants' asbestos-containing products. So OCF,
5 through its very excellent defense counsel, would bring
6 these picture books to plaintiff's depositions and try to
7 get the plaintiff to remember and testify that he had
8 been exposed to the products of defendants who were
9 sitting around the deposition table. These were
10 co-defendants still in the system. This raised the
11 profile substantially for much smaller defendants, and it
12 was something that people were very upset about.

13 Ultimately, Owens Corning's trial strategy was a
14 complete disaster. It took a huge number of verdicts
15 that it could not sustain. It then reverted to -- for a
16 short time or relatively short time reverted back to a
17 strategy. I think they called it the NSP, the National
18 Settlement Program, where they were trying to resolve
19 many, many cases. But that didn't work either because --
20 because once a party becomes a target defendant, there's
21 no going back to being a peripheral. And the demands on
22 Owens Corning were such that, obviously, in the judgment
23 of that company it had no choice but to file for
24 bankruptcy, which it did on October the 5th of 2000.

25 Q. Let's turn back to your opinions. You stated that

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1 in the tort system in the '80s and '90s, many defendants
2 were once peripheral, free-riding on the defense and
3 settlement efforts of lead defendants.

4 A. Yes.

5 Q. What do you mean by "peripheral?"

6 A. Well, everything other than Manville, I believe,
7 at one time or another called themselves peripheral.
8 That was a useful phrase, particularly in negotiating
9 with plaintiff's lawyers, to essentially take the
10 position that, gee, my client never really had much of a
11 market share in this, that or the other area of asbestos
12 products and I really just shouldn't be, you know, the
13 target. So I gather that's why you put it up there in
14 quotes, because it's a self-serving characterization.

15 It's a characterization which I frankly admit that
16 I used to try to describe Flexitallic, but it was
17 completely self-serving. I think it came out in the
18 testimony of Mr. Magee that even companies with as
19 significant a presence in asbestos as W.R. Grace referred
20 to themselves as peripheral defendants. So this was --
21 Owens Corning referred to itself as a peripheral
22 defendant in the 1980s.

23 Q. What, if anything, did you observe about Garlock
24 in the '90s?

25 A. Well, Garlock -- Garlock, as we saw, was certainly

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1 in the tort system from the time of the Manville
2 bankruptcy, if not before. In the '80s and '90s when I
3 was attending these many, many defense attorney meetings
4 all over the country, I don't recall Garlock ever taking
5 an active role in anything, which was completely
6 appropriate because Garlock was not a target and it was
7 -- it made no litigation sense if you were not a target
8 to get up in a courtroom anywhere and say anything. So I
9 just don't recall Garlock taking a very active role in
10 the asbestos personal injury litigation until, I think,
11 sometime around '96, '7, and '8. I remember Garlock
12 being a bit more vocal. And, certainly, I remember
13 Garlock making various applications in various courtrooms
14 around the country.

15 Q. The second opinion that we have up there is when
16 those lead defendants went bankrupt, others were brought
17 to center stage. There was no returning to the
18 periphery.

19 A. Yes.

20 Q. How did you come to that conclusion?

21 A. Well, we've sort of covered this. I mean, this is
22 just what happened. This was the example of me paying,
23 instead of \$50, \$100 in those Altoona cases. The
24 plaintiff's bar proved itself to be extremely resourceful
25 in turning to new defendants and working up the case

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1 against those defendants.

2 And the fact of the matter is that once that
3 happened, once the plaintiff's attorney forced the
4 peripheral defendant into the arena, if you will, that
5 defendant stayed in the arena until the end. And the end
6 is either bankruptcy or, in a few cases, those former
7 peripheral defendants who are now targets are actually
8 still in the tort system. But once you're in the arena,
9 you don't get to go back to the dressing room.

10 Q. Let's look at ACC-902. I've put up on the board
11 the information brief of Babcock & Wilcox, and this is on
12 page 33. What does this tell you?

13 A. Well, this is another excellent example of the
14 fact that a company like Babcock & Wilcox, which
15 laterally became very much a target in asbestos
16 litigation, which is to say in the '90s became a target
17 referring to itself as a peripheral defendant. It says
18 with the bankruptcy of Johns-Manville, the search for new
19 defendants started in earnest. And B&W and other
20 peripheral defendants found themselves the target of new
21 claims. This is precisely what I was trying to indicate
22 to the Court has been occurring since August of 1982.

23 Q. Let's look at ACC-903, please. This is an
24 information brief for U.S. Gypsum dated June 27th 2001.
25 What does this document tell you?

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1 A. Well this is the same concept. I mean, here we
2 have the sub-heading of the brief. The flood gates open
3 and we have USG saying, beginning in the mid-'90s and
4 continuing to the present, new filings have reached
5 record levels, et cetera. U.S. Gypsum, historically a
6 peripheral defendant, has become a larger target of the
7 litigation as additional major defendants filed for
8 bankruptcy. Again, this is -- this is the history of
9 asbestos litigation since 1982.

10 Q. Mr. Hanly, once out of the periphery, did
11 companies like U.S. Gypsum or Babcock & Wilcox ever go
12 back?

13 A. No. As I said, once you're pushed into that
14 arena, you're there for the duration.

15 Q. Is it realistic for a defendant to think that even
16 though they've become a prominent defendant or target
17 that they can go back to being a peripheral defendant?

18 A. That would be a completely fanciful notion.

19 Q. Your next opinion: Juries were focused on doing
20 justice between the parties present in the courtroom, and
21 the defendant responsible for widely sold asbestos
22 products cannot prevail in the long-term by blaming
23 others. Can you explain to the Court how you came to
24 that conclusion?

25 A. Well, again, based on 20 years observing what

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1 juries were doing, either firsthand or receiving wholly
2 reliable reports about what juries were doing and what
3 co-defendants were attempting to do which from the
4 beginning, from the Manville bankruptcy, meant trying to
5 lay off some of their liability on Manville by trying to
6 prove up the plaintiff's exposure to Manville or
7 exposures to other folks who weren't in the courtroom --
8 either weren't in the courtroom because they were in
9 bankruptcy, or because they had settled before the trial.

10 And it seems to me that this is -- this is sort of
11 trial lawyer common sense. It's the reason that we now
12 play video clips of depositions, rather than read them to
13 juries, because the closer you can bring the jury to the
14 actual person, the witness, the more effective it is.
15 It's the reason, in my judgment, that living mesothelioma
16 cases are more valuable than deceased mesothelioma cases.
17 The living mesothelioma victim gets to come to the
18 courtroom and the jury can, in a sense, touch the party,
19 touch that person. The deceased victim, by definition,
20 is not there.

21 I believe that this also is the case with respect
22 to empty chairs. All of the documentary evidence in the
23 world about an empty chair, an absent defendant, in my
24 experience, generally speaking. Garlock has certainly
25 put up examples that are counter to that, but those are

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1 very few examples. But generally speaking, you're just
2 not going to reduce your verdict by any substantial
3 amount by pointing to the empty chair. That was our --
4 that was Flexitallic's experience. And I heard in this
5 courtroom testimony concerning a case just two weeks ago
6 where that very phenomenon also occurred.

7 Q. Do you recall any specific cases where you
8 observed this?

9 A. Yes. Well the most painful one for me as a
10 national coordinating counsel involved Flexitallic the
11 gasket company. This was the Wells case in Beaumont,
12 Texas, Jefferson County, Texas, very early in 2001. In
13 that case, Flexitallic put on an encapsulation defense.
14 In that case the Court's charge had on the jury -- on the
15 jury interrogatories the opportunity for the jury to
16 assess liability against some 20-odd absent defendants,
17 defendants who were not in the courtroom. This was a
18 consolidation of, I believe, 18 cases.

19 The result in that case was the jury assessed
20 liability against Flexitallic and its co-defendant. The
21 total verdict was approximately \$32 million. And in each
22 and every one of the 18 cases, a separate verdict sheet
23 for 18 cases, the jury put zero or no for all -- each and
24 every one of the absent co-defendants.

25 Q. Let's put up ACC-411. Do you recognize this

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1 document?

2 A. Yes. This is the case that I mentioned. This is
3 the Wells case, Jefferson County, Texas. That's over in
4 east Texas, a place called Beaumont on the -- near the
5 coast. This was the actual charge of the Court in that
6 case.

7 Q. Let's take a look at page 23. What does this tell
8 you, Mr. Hanly?

9 A. So this is one of the, I believe, 18 separate
10 sheets that the jury had. The Court can see this one was
11 for plaintiff Ulyse Borel. And here you can see that the
12 jury was permitted to assess a percentage for everybody
13 on this list. Now what's interesting about this list, in
14 the context of what I've heard from the witnesses in this
15 courtroom, is that a number of these companies on the
16 list were amosite insulation companies; AC&S is one such
17 company. Owens Illinois. Rapid American. I believe
18 Crown Cork and Seal. Garlock is on this as well.

19 In any case, the jury had the opportunity to
20 assess liability against amosite insulation companies.
21 By the way, this is the Texaco refinery over there in
22 Port Arthur, I believe, Texas. This is a facility with a
23 huge quantity of insulation materials. And nevertheless,
24 in each of the 18 cases, there was no liability to any
25 empty chair.

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1 Q. You mentioned Owens Illinois. Is Owens Corning on
2 the verdict sheet?

3 A. I don't -- no, it's not on the verdict sheet. The
4 reason it's not on the verdict sheet is this case was
5 Judge McHaffey in this case entered the Case Management
6 Order on October 1st 2000. On October 5th 2000, Owens
7 Corning, which had been a defendant in the case, filed
8 for bankruptcy. So Owens Corning was out of the case as
9 a consequence of the automatic stay.

10 Q. What impact, if any, did that have on the case?

11 A. That was a huge detriment to Flexitallic and the
12 other two -- there were two other defendants. One
13 settled out. The reason that was a huge detriment is
14 that Owens Corning -- as I testified, they were really
15 carrying the laboring oar, if you will, throughout all
16 these cases out of that refinery and elsewhere. They
17 were doing all the plaintiff depositions. They were
18 putting up all the experts for depositions. They were
19 basically running trial strategy, at least in a general
20 sense. And so this had quite a detrimental effect on the
21 remaining defendants, including Flexitallic Gasket
22 Company which I represented.

23 Q. Do you recall any of the defendants -- defenses
24 Flexitallic presented in that case?

25 A. Yes. Well, this was a consolidation of

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1 nonmalignant claims. They were alleged asbestosis
2 claims. So there was no chrysotile does not cause
3 mesothelioma defense appropriate, because there was no
4 mesotheliomas. But Flexitallic did put up an
5 encapsulation defense. And as I said, I believe it's
6 fair to say that Flexitallic had a super-encapsulated
7 product. And nevertheless, that defense was apparently
8 rejected by the jury when it assessed the verdict and
9 rendered the verdict against Flexitallic.

10 Q. You've stated it's been your opinion that in the
11 1990s, plaintiffs did not usually focus their cases on
12 gasket products of plaintiff's focus --

13 THE COURT: Before you get into that, let's go
14 ahead and break for the day. It's 5:30 and we have to
15 quit. We'll come back at 9:30 in the morning. It
16 doesn't appear that there's any prospect of getting done
17 before the end of the day, so we'll stop now. Okay?

18 MR. PHILLIPS: We have an issue where Mr. Hanly
19 needs to be in New York in court for a hearing tomorrow,
20 so we're going to have to bring him back in a day or so.

21 THE COURT: How long do you think -- how much more
22 do you have left of him?

23 MR. PHILLIPS: I could finish in 15 minutes.

24 THE COURT: How much cross-examination do you
25 have, Mr. Krisko?

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1 MR. KRISKO: Probably 45 minutes or an hour, Your
2 Honor.

3 THE WITNESS: Your Honor, I'm happy to come back.
4 It's just I have a district judge that I have to be
5 before tomorrow.

6 THE COURT: I think we have to do that. We've got
7 -- you can thank sequestration for this, so call your
8 congressman. But we have to quit. They have to close up
9 the building.

10 We'll be back at 9:30.

11 (Off the record at 5:33 p.m.)
12
13
14

15 **CERTIFICATE**

16 I, Tracy Rae Dunlap, RMR, CRR, an Official Court
17 Reporter for the United States District Court for the
18 Western District of North Carolina, do hereby certify
19 that I transcribed, by machine shorthand, the proceedings
had in the case of IN RE: GARLOCK SEALING TECHNOLOGIES,
LLC, et al, Bankruptcy Case No. 10-BK-31607, on August
6, 2013.

20 In witness whereof, I have hereto subscribed my
21 name, this 7th day of August 2013.

22 ___/S/___Tracy Rae Dunlap___
23 TRACY RAE DUNLAP, RMR, CRR
24 OFFICIAL COURT REPORTER
25